

7-23-2009

Lightner v. Hardison Clerk's Record Dckt. 36259

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

WILLIAM LIGHTNER and MARCIA
LIGHTNER,

PLAINTIFFS-APPELLANTS,

vs.

JOHN HARDISON, BRENT REINKE and
STEVE NELSON,

DEFENDANTS-RESPONDENTS.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

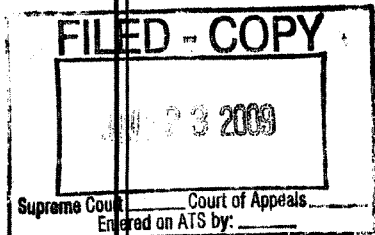
Hon RONALD J. WILPER, District Judge

WILLIAM LIGHTNER

Appellant Pro Se

PAUL R. PANTHER
Lead Deputy Attorney General

Attorney for Respondent



36259

IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM LIGHTNER and MARCIA
LIGHTNER,

Plaintiffs- Appellants,

vs.

JOHN HARDISON, BRENT REINKE and
STEVE NELSON,

Defendants-Respondents.

Supreme Court Case No. 36259

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE RONALD J. WILPER

WILLIAM LIGHTNER

APPELLANT PRO SE

BOISE, IDAHO

PAUL R. PANTHER

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

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Date: 5/22/2009

Time: 08:51 AM

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Fourth Judicial District Court - Ada County

User: CCLUNDMJ

ROA Report

Case: CV-OC-2007-20193 Current Judge: Ronald J. Wilper

William Lightner, etal. vs. John Hardison, etal.

Date	Code	User		Judge
11/5/2007	NCOC	CCWRIGRM	New Case Filed - Other Claims	Ronald J. Wilper
	MOAF	CCWRIGRM	Motion & Affidavit for Waiver of Fees	Ronald J. Wilper
	MOAF	CCWRIGRM	Motion & Affidavit for Appointment of Counsel	Ronald J. Wilper
1/9/2008	ORDR	DCJOHNSI	Order Denying Motion for Counsel, Fee Waiver, Prelim. Injunction	Ronald J. Wilper
1/14/2008	COMP	CCDWONCP	Complaint Filed	Ronald J. Wilper
	SMFI	CCDWONCP	(7) Summons Filed	Ronald J. Wilper
1/15/2008	AFOS	CCDWONCP	Affidavit Of Service (01/15/08)	Ronald J. Wilper
1/28/2008	CERM	MCBIEHKJ	Certificate Of Mailing	Ronald J. Wilper
2/5/2008	ANSW	CCTEELAL	Answer and Demand for Jury Trial (Kubinski for Hardison Blades Kirkman McIntire Amerfoot Greenland)	Ronald J. Wilper
4/21/2008	MOTN	CCTEELAL	Motion to Dismiss Certain Named Defendants	Ronald J. Wilper
	MOTN	CCTEELAL	Motion to Amend Civil Rights Complaint	Ronald J. Wilper
	SMFI	CCTEELAL	Summons Filed	Ronald J. Wilper
4/22/2008	AFFD	CCMCLILI	Affidavit in Support of Amended Complaint	Ronald J. Wilper
4/23/2008	AFFD	MCBIEHKJ	Amended Affidavit in Support of Amended Complaint	Ronald J. Wilper
4/28/2008	NOTC	DCJOHNSI	Notice of Status Conference	Ronald J. Wilper
	HRSC	DCJOHNSI	Hearing Scheduled (Status 05/29/2008 03:00 PM)	Ronald J. Wilper
4/29/2008	AFFD	CCBARCCR	Affidavit of Pamela Herold RE: Service of Complaint	Ronald J. Wilper
5/5/2008	NOTC	CCEARLJD	Notice of Change of Address (William Lightner)	Ronald J. Wilper
5/7/2008	MOTN	CCTOONAL	Motion to Show Cause	Ronald J. Wilper
5/14/2008	MISC	MCBIEHKJ	Non Opposition to Motion to Dismiss Certain Defendants	Ronald J. Wilper
	RESP	CCTOWNRD	Response To Motion to Amend Civil Rights Complaint	Ronald J. Wilper
5/15/2008	RESP	MCBIEHKJ	Response To Motion to Show Cause	Ronald J. Wilper
	MOTN	MCBIEHKJ	Motion with Affidavit and Support	Ronald J. Wilper
5/19/2008	NOTC	DCJOHNSI	Notice Resetting Status Conf.	Ronald J. Wilper
	CONT	DCJOHNSI	Continued (Status 06/12/2008 03:00 PM)	Ronald J. Wilper
	MOTN	CCEARLJD	Motion to Vacate Hearing	Ronald J. Wilper
	MOTN	CCEARLJD	Motion to Transport	Ronald J. Wilper
5/27/2008	MOTN	CCAMESLC	Motion to Dismiss Motion to Compel	Ronald J. Wilper
	NOTS	MCBIEHKJ	Notice Of Service	Ronald J. Wilper
5/29/2008	NOTS	MCBIEHKJ	Notice Of Service	Ronald J. Wilper
6/12/2008	ORDR	DCABBOSM	Order Granting Motion to Amend Complaint	Ronald J. Wilper

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Date: 5/22/2009

Fourth Judicial District Court - Ada County

User: CCLUNDMJ

Time: 08:51 AM

ROA Report

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Case: CV-OC-2007-20193 Current Judge: Ronald J. Wilper

William Lightner, etal. vs. John Hardison, etal.

Date	Code	User	Judge
6/12/2008	DCHH	DCJOHNSI	Hearing result for Status held on 06/12/2008 03:00 PM: District Court Hearing Held Court Reporter: Number of Transcript Pages for this hearing estimated:
6/16/2008	AMCO	CCEARLJD	Amended Complaint Filed
	SMFI	CCEARLJD	(3) Summons Filed
6/18/2008	AFOS	CCTEELAL	Affidavit Of Service of Richard Drennon 6.17.08
7/1/2008	ANSW	CCCHILER	Answer to Amended Complaint and Jury Demand (M Kubinski for Hardison, Nelson, & Reinke)
7/7/2008	HRSC	DCABBOSM	Hearing Scheduled (Jury Trial 02/18/2009 09:00 AM)
	HRSC	DCABBOSM	Hearing Scheduled (Civil Pretrial Conference 02/10/2009 03:30 PM)
	ORDR	DCABBOSM	Order Setting Proceedings and Trial
7/14/2008	MOTN	MCBIEHKJ	Motion to Disqualify Judges Becker, Goff, Hurlbutt, Judd, Meehl, Shilling, Woodland and Trout
7/28/2008	ORDR	DCABBOSM	Order Denying Motion to Disqualify Various Judges, Without Prejudice
7/30/2008	MOTN	CCRANDJD	Renewed Motion to Disqualify Judge Daniel Hurlbutt
7/31/2008	ORDR	DCJOHNSI	Order Denying Motion
8/15/2008	NOTS	CCWATSCL	Notice Of Service
9/15/2008	MOTN	CCGDULKA	Motion for More Definite Answers and Affidavit in Support
10/14/2008	NOHG	CCRANDJD	Notice Of Hearing re Motion for More Definite Answer (11.6.08@3:30pm)
	MOTN	CCRANDJD	Motion to Transport
10/20/2008	MISC	CCMCLILI	Defendants' Response to Plaintiffs' Motion to Transport
10/29/2008	MISC	CCMCLILI	Defendants' Response to Plaintiff's Motion for More Definite Answer
	AFFD	CCMCLILI	Affidavit of Mark A. Kubinski
	NOTS	CCMCLILI	Notice Of Service
11/3/2008	NOTC	DCJOHNSI	Notice Vacating Hearing
11/4/2008	HRSC	CCDWONCP	Amended Notice of Hearing (Hearing Scheduled 11/14/2008 11:00 AM)
11/14/2008	DCHH	DCJOHNSI	Hearing result for Hearing Scheduled held on 11/14/2008 11:00 AM: District Court Hearing Held Court Reporter: cromwell Number of Transcript Pages for this hearing estimated:50

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Date: 5/22/2009

Fourth Judicial District Court - Ada County

User: CCLUNDMJ

Time: 08:51 AM

ROA Report

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Case: CV-OC-2007-20193 Current Judge: Ronald J. Wilper

William Lightner, etal. vs. John Hardison, etal.

Date	Code	User		Judge
11/21/2008	ORDR	DCJOHNSI	Order Denying Motion for More Def. Statement	Ronald J. Wilper
	MOTN	MCBIEHKJ	Motion for Summary Judgment	Ronald J. Wilper
	MEMO	MCBIEHKJ	Memorandum in Support of MSJ	Ronald J. Wilper
	AFFD	MCBIEHKJ	Affidavit of John Hardison	Ronald J. Wilper
	AFFD	MCBIEHKJ	Affidavit of Mark A Kubinski	Ronald J. Wilper
	AFFD	MCBIEHKJ	Affidavit of Jill Whittington	Ronald J. Wilper
	HRSC	MCBIEHKJ	Notice of Hearing Scheduled (Motion for Summary Judgment 12/29/2008 11:00 AM)	Ronald J. Wilper
	MOTN	MCBIEHKJ	Motion to Amend Order Setting Proceedings and Trial	Ronald J. Wilper
11/25/2008	ORDR	DCABBOSM	Order Granting Defendants' Motion to Amend Order Setting Proceedings and Trial	Ronald J. Wilper
11/26/2008	NOTH	CCNELSRF	Amended Notice Of Hearing	Ronald J. Wilper
	HRSC	CCNELSRF	Hearing Scheduled (Motion for Summary Judgment 12/22/2008 02:00 PM) Amended	Ronald J. Wilper
12/9/2008	RSPN	CCBOYIDR	Response and Objection to States' Motion for Summary Judgment with Affidavit in Support	Ronald J. Wilper
	AFFD	CCBOYIDR	(2) Affidavit	Ronald J. Wilper
12/15/2008	REPL	CCGWALAC	Reply Memorandum in Support of Defendants' Motion for Summary Judgment	Ronald J. Wilper
12/16/2008	MOTN	CCWRIGRM	Motion to Strike Affidavit of William Lightner	Ronald J. Wilper
12/17/2008	AFFD	CCNELSRF	Affidavit of Mark Kubinski In Support of Defendant's Motion to Strike Affidavit of William Lightner	Ronald J. Wilper
12/19/2008	NOTC	CCDWONCP	Notice of Filing Affidavit in Support of Response to Defendants' Motion to Strike William Lightner's Affidavit	Ronald J. Wilper
12/22/2008	DCHH	DCJOHNSI	Hearing result for Motion for Summary Judgment held on 12/22/2008 02:00 PM: District Court Hearing Held Court Reporter: cromwell Number of Transcript Pages for this hearing estimated: Amended-50	Ronald J. Wilper
1/29/2009	ORDR	DCJOHNSI	Order Granting Def. Motion for Summary Judgment	Ronald J. Wilper
	CDIS	DCJOHNSI	Civil Disposition entered for: Amersfoort, Tony, Defendant; Blades, Randy, Defendant; Greenland, Co, Defendant; Hardison, John, Defendant; Kirkman, Jeff, Defendant; McIntire, Trent, Defendant; Nelson, Steve, Defendant; Reinke, Brent, Defendant; Lightner, Marcia, Plaintiff; Lightner, William, Plaintiff. Filing date: 1/29/2009	Ronald J. Wilper
	STAT	DCJOHNSI	STATUS CHANGED: Closed	Ronald J. Wilper

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Date: 5/22/2009

Time: 08:51 AM

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Fourth Judicial District Court - Ada County

User: CCLUNDMJ

ROA Report

Case: CV-OC-2007-20193 Current Judge: Ronald J. Wilper

William Lightner, etal. vs. John Hardison, etal.

Date	Code	User	Judge
2/9/2009		CCRANDJD	Miscellaneous Payment: Transcript Of Recording Per Page Paid by: Lightner Receipt number: 0016481 Dated: 2/9/2009 Amount: \$15.00 (Credit card)
2/12/2009	MORE	CCFERCJD	Motion To Reconsider The Courts Order Granting Defendants' Motion For Summary Judgment
	MEMO	CCFERCJD	Memorandum in Support of Motion For Reconsideration
	AFFD	CCFERCJD	Affidavit of Marcia Lightner in Support of Motion For Reconsideration
3/5/2009	REPL	CCGWALAC	Response to Plaintiffs' Motion to Reconsider the Court's Order Granting Defendants' Motion for Summary Judgment
3/11/2009	APSC	CCTHIEBJ	Appealed To The Supreme Court
	MOAF	CCTHIEBJ	Motion & Affidavit For Fee Waiver on Appeal
3/13/2009	ORDR	DCJOHNSI	Order Denying Motion to Reconsider
3/23/2009	NOTC	DCJOHNSI	Notice of Intent to Deny Motion
	AMEN	CCTHIEBJ	Amended Notice of Appeal
	RSPN	CCTHIEBJ	Response to Plaintiffs' Motion And Affidavit for Fee Waiver on Appeal
	AFFD	CCTHIEBJ	Affidavit of Mark A. Kubinski
4/2/2009	AFFD	CCGARDAL	Affidavit of Marcia Lightner for Fee Waiver on Appeal
	AFFD	CCGARDAL	Affidavit of William Lightner for Fee Waiver on Appeal
4/14/2009	ORDR	DCJOHNSI	Order Recommending Denial of Fee Waiver on Appeal

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RECEIVED
NOV 05 2007
ADA COUNTY

William Lightner
ISCI #41438
PO Box 14
Boise ID, 83714
Plaintiffs,
Marcia Lightner
300 E 41st Street
Garden City, Id. 83714
Plaintiffs,

NO. _____
FILED _____
AM. _____

JAN 14 2008

J. DAVID NAVARRO, Clerk
By PATRICIA A. DWORCH
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

William Lightner)
Marcia Lightner)
Plaintiffs,)
vs)
John Hardison, Randy Blades,)
Steve Nelson, Jeff Kirkman,)
Trent McIntire, Tony Amersfoort,)
CO. Greenland, John Doe's et., al.)
Defendants,)
_____)

CV 00 0720193

Case No. _____

**42 U.S.C. 1983
CIVIL RIGHT COMPLAINT**

PARTIES

Plaintiff's

1. William Lightner is a citizen of Idaho, presently residing at ISCI P. O. Box 14
Boise, ID. 83707.
2. Marcia Lightner is a citizen of Idaho presently residing at 300 E 41st Street Garden
City, ID. 83714.

Defendant's

3. John Hardison is a citizen of Idaho, who's address is ISCI P.O. Box 14 Boise ID. 83707. At the time the claim alleged in this compliant arose, the defendant was acting under the color of the State law. In the capacity of ISCI Warden. He is ultimately responsible for the events and actions of staff at ISCI.
4. Randy Blades, is a citizen of Idaho, who's address is IDOC 1299 N. Orchard Ste # 110 Boise, ID 83706. At the time the claim alleged in this compliant arose, the defendant was acting under the color of the State law, in the former capacity of ISCI warden.
5. Steve Nelson is a citizen of Idaho, who's address is IDOC 1299 N. Orchard Ste #110 Boise, ID 83706. At the time of the claim alleged in this complaint arose, the Defendant was acting under the color of the State law in the capacity of the ISCI Deputy Warden of Operations.
6. Jeff Kirkman is a citizen of Idaho, who's address is ISCI P.O. Box 14 Boise Id. 83707. At the time of the claim alleged in this complaint arose, the Defendant was acting under the color of the State law in the capacity of the ISCI wardens assistant, and was involved with the reinstatement of visiting through and by ex-warden Blades.
7. Trent McIntire, is a citizen of Idaho, who's address is ISCI, P.O. Box 14 Boise, ID 83707. At the time of the claim alleged in this complaint arose, the Defendant was acting under the color of the State law in the capacity of the ISCI visiting room Sgt.

8. CO Tony Amersfoort, is a citizen of Idaho, who's address is ISCI P.O. Box 14 Boise, ID. 83707. At the time of the claim alleged in this complaint arose, the defendant was acting under the color of the State law in the capacity of the ISCI visiting room correctional officer.
9. CO Greenland, is a citizen of Idaho, who's address is ISCI P.O. Box 14 Boise, ID. 83707. At the time of the claim alleged in this complaint arose, the defendant was acting under the color of the State law in the capacity of the ISCI visiting room correctional officer.

JURISDICTION

Jurisdiction is asserted pursuant to IC 1-705 and IC 18-310 (1).

NATURE OF THE CASE

10. William and Marcia Lightner have been legally married for 11 years.
11. Marcia Lightner was arrested by information on or about 10 April 2007 and released by the Court on bail.
12. On or about 12 April 2007 Marcia Lightner was informed by Steve Nelson that do to her recent arrest her visiting privileges were indefinitely suspended.
13. This suspension continued for 10 weeks, while Randy Blades was ISCI warden. After appealing the issue to Warden Blades by writing him a letter of explanation about the arrest and unjust actions taken against their visiting, Warden Blades reinstated the Lightner's visiting. He had his assistant, Jeff Kirkman contact Marcia Lightner informing her that she was again approved by the warden to visit.

14. As of 1 October 2007 without further incident or conflict, new, current warden Hardison again suspended Marcia Lightner's visiting privileges with her husband do to her April 07 arrest.

CAUSE OF ACTION CLAIM I

15. The Plaintiff's allege that Section 13 of the Idaho State Constitution, and USCA Constitutional Amendment 14 was broke when Marcia received punishment without due process.

SUPPORTING FACTS

16. *"That taking away of privileges is a form of punishment. In the United States a person is to be presumed innocent until proven guilty."* In the Plaintiff's case, the opposite has been found to be true. Marcia Lightner is being presumed guilty of a crime prior to going to Court, and is receiving punishment by the Defendant's without having been given a hearing. Even inmates receiving Disciplinary Offence Reports (DOR's), in the penal system are entitled to a due process hearing. The Lightners are being punished, by loosing the closest thing they have to a normal setting with each other and that was to visit each week. It has been said, and well known that to keep a family union together, it is vitally important to share time together. It is also necessary to have family support to functionally rehabilitate inmates. To deprive William of his right to visit his wife is cruel and unusual when due process "A Constitutional Right" is ignored.

17. Hardison quotes policy 604 which is (NOT LAW), but which states:
- “Termination of Visiting Privileges Visiting privileges may be terminated at the discretion of the facility head or designee for any length of time, including permanently, for violation or attempted violation of any state or federal law, any board rule, policy and procedure. SOP, field memoranda, or failure to follow staff instructions (emphases added).”*
18. Lightners claim that their Due Process Rights are being violated by receiving a punishment prior to a conviction, or even a hearing. Due process is a guaranteed Constitutional Right the Plaintiff's are entitled to. Lightners also claim that Policy 604 does not even mention a due process hearing. If this policy is to be interpreted that due process is not necessary, then it violates the entire judicial system, and should be deemed an illegal policy.
19. It is clear that the Lightners had an established visiting schedule in which they visited three times each week with out incident. To now initiate a visiting restriction on the Lightners served no legitimate Pena logical objectives. In other words, there was no legitimate governmental interest present to over ride the Lightners Constitutional rights.
20. Marcia Lightner had passed the adequate procedural safeguards prison officials used when they granted her normal visiting privileges. Each year she renewed her application and was approved. To take away those privileges from an incident unrelated to the prison, in which had no baring on her visiting without due process, is punishment and a USCA Constitutional Amendment 14 violation.

21. Lightner's claim that Marcia's visiting privileges could have been taken if she was found guilty by a Court of law. But to have her visits suspended without due process of law is a violation of their Constitutional Rights.
22. Hardison's memo goes on to say "*Pending the outcome of her felony charges she may reapply for visiting.*" In essence, Hardison is openly and in writing, admitting that he is fully aware that Lightner has not yet been accorded a due process hearing in a Court of Law. He has taken it upon himself to be the Judge and executioner, to place sentencing upon Lightner without holding the body of authority to do so.
23. Hardison's position (As he puts it) is to use discretion as being the facility head, he is not the judge, jury and executioner. His position requires him to review the facts of security issues to the facility, and the Lightner's claim there are NO security issues concerning their Visiting. When Marcia Lightner never posed a risk to the institution prior to her arrest, or since her reinstatement from warden Blades. No special circumstances exist that would warrant the disregard of due process.
24. To bar the Lightner's from visiting with each other, causes distress and mental anguish from the separation. Violating their due process rights is not only cruel and unjust punishment, it also inflicts injury to the survival of their marriage and has caused depression and health issues that normally would not have otherwise arisen. The suspension of their visitation was an a typical and significant hardship in relation to the ordinary incidents of prison life. USCA Constitutional Amendment 14.
25. The Lightner's did not receive any written notification prior to the suspension, They did not receive a hearing, nor were they afforded an appeal procedure. While Prison

inmates do not have a right to visitation, both visitors and inmates must be given the right to administrative in judicial review of such restrictions.

CAUSE OF ACTION CLAIM II

26. The Lightner's also claims that the termination of their visiting privileges is not just due to Marcia's pending charge, but was aimed directly as a form of harassment and retaliation.

SUPPORTING FACTS

27. The Lightner's married in 1997. This was frowned upon, because Marcia Lightner had previously worked at Swanson's Commissary as a contract vender, (Not a State Employee).
28. Even after they were married, out of just pure meanness, the Lightners were denied visiting privileges for 2 years.
29. Marcia Lightner had to hire an attorney to assist them in getting their visiting approved. After 5 months of legal intervention, the Lightners was given their visiting privileges . But to continue the harassment, they were separated with a glass partition for another year. It was then a total of 3 years and 5 months of no contact and normal interaction before the Lightner's were given normal visiting privileges.
30. Once normal visiting was approved, the warden, out of continued harassment and retaliation transferred William to Idaho Correctional Institution Orofino (ICIO).

31. Marcia Lightner followed her husband to Orofino, rented a home and started School in Lewiston. This did not deter the prisons attempt to keep the Lightners separated. This time they moved William to a county jail at the other side of the State in Idaho Falls ID. That act caused another 11 months of separation before William was eventually moved back to ICIO.
32. For eleven (11) years, State prison officials have harassed and attempted to separate the Lightner's. This has caused mental torment, anguish, and depression, not to mention the cost involved.
33. Marcia Lightner poses no security risk. It is simply harassment to now again suspend her visits in the name of security, from an alleged incident that was not even at or connected to the prison.
34. The Lightners assert that their visitation was suspended for reasons other than Marcia's pending charge. That being, retaliation against the Lightners because they exercised their fundamental rights perfected by the Constitution to address other issues they had in the courts.
35. The 14th Amendment states in part "*nor shall any State deprive any person of life, liberty, or property, with out due process of law.*" The Petitioners claim that Marcia's visitation in liberty interest was interfered with by ISCI officials with out due Process, because it was being done in retaliation. Consequently, this imposes a typical and significant hardship on the Lightner's Marriage in relation to the ordinary incidents of prison life.

CAUSE OF ACTION CLAIM III

36. Claim three (3) is also a violation of Idaho State Constitution Article 13. It States
"No person shall be twice put in jeopardy for the same offence" The Lightners visits
were suspended for four (4) months in April for Marcia's arrest. To now suspend
them again for the same arrest is Double Jeopardy.

SUPPORTING FACTS

37. The Lightner's were denied visiting from 12 April, 2007 until 20 July, 2007 due to
Marcia's 10 April 2007 arrest.
38. After having missed 41 visits. Marcia appealed the legality of the suspension to
Warden Randy Blades. Warden Blades, after concern and reconsideration, reinstated
their visiting privileges and Marcia was notified by telephone from Jeff Kirkman, that
she could resume her visiting with her husband.
39. Upon replacing Randy Blades as warden, John Hardison again suspended Lightners
visits for the same April incident. Having lost visiting privileges once without due
process was bad enough but to now lose them a second time for the same offence is
Double Jeopardy.

PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

40. The Lightners have sought informal relief from the appropriate administrative
officials by talking personally, and on the phone to Prison officials when their visits
were Suspended.

41. As of the suspension inflicted by Warden Hardison 1 October 2007 the Plaintiffs have exhausted the prison grievance system and making appeals with the Corporate IDOC offices. No relief was given.
42. When all efforts failed to get the visiting reinstated, The Lightners filed a tort claim at the Secretary of State's Office, and then this civil action.

CONCLUSION

43. It is stated in reply that "Per visiting SOP 604.02.01.001" ISCI would not allow Marcia Lightner visiting privileges. Just because the Defendants have a written Standard Operation Procedure (SOP) or a policy in place, does not make it legal. To deny someone visiting privileges because of an allegation is one thing, but to take that established privilege away because of an allegation is punishment. Prison officials themselves from allegations outside prison activity have tried, convicted and sentenced Marcia Lightner by denying her visits.
44. To invoke a punishment without due process simply as a policy and procedure is Unconstitutional. It is slanderous, and creates mental and emotional torture. It has been stated, that Idaho values marriages and family unity. Their Policies and Procedures should show it. IDOC Policies and Procedures should coincide with the Constitution and not violate the rights of a husband and wife from having a normal setting of spending a valuable, and nourishing time together.
45. Elected Governmental bodies have stated that Idaho promotes families, and family unity. It should therefore be the States stand to promote and encourage family

visitations. This recognition is based on the importance of visitation to inmates.

Visitation has been widely recognized as indispensable to rehabilitation.

46. With respect to having their visits suspended, the Lightners were not given the opportunity to be heard or present evidence because there was no hearing of any kind. They were not allowed to confront accusers or cross examine witnesses. In fact, they were not afforded any kind of procedure before being deprived they visiting privileges.
47. Under these circumstances, the rest of erroneous deprivation unquestionably was heightened. In the probable value of having employed at least some procedural safe guards is considerable. It must be ruled that the Lightners should have been given due process to ensure that the State-created right is not arbitrarily abrogated.
48. Suspending the Lightner's visits without due process is a Constitutional violation of their rights. To do it twice for the same offence is willful malice with intent to harass and inflict psychologically injury.
49. The Lightner's due process rights have been violated. They were subjected to harassment and Double Jeopardy, and are entitled to relief and compensation.

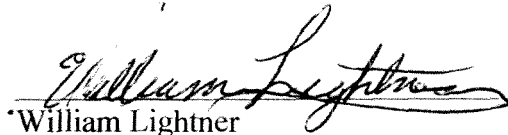
REQUEST FOR RELIEF

50. The Lightner's request the following relief:
 - A. That while incarcerated, William Lightner #41438 will not be moved from his current housing assignment. If he is again moved, it would have to be taken as a serious form of retaliation do to the filing of this law suit. William Lightner is

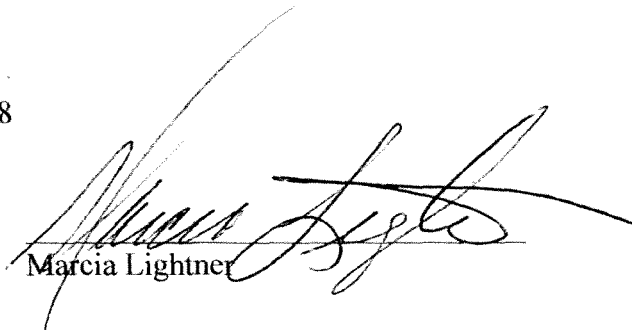
safe and doing [redacted] at his current housing assignment. [redacted]

- B. That the Lightners receive normal visiting privileges, equal to, other visitors and that to be denied visiting with out just cause would be considered a contempt of court.
- C. That for the Constitutional violations, the Lightners be awarded \$100,000.00 plus \$5000.00 per visit that has been unconstitutionally taken away from them.
- D. That IDOC be ordered to change their visiting Policy and Procedures so that they reflect Constitutional standards.
- E. Anything else the Court feels the Lightners are due or entitled to.
- F. Finally, that these issues be heard and determined by a jury.

Dated this 14 day of January 2008


William Lightner

Dated this 14 day of January 2008

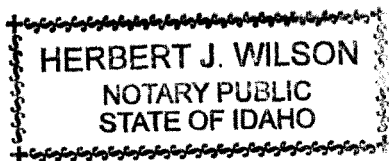

Marcia Lightner

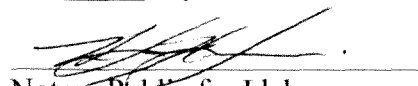
STATE OF IDAHO)
(ss
County of Ada)

William Lightner, being first duly sworn, deposes and says: That he is a Plaintiff in the above entitled action, that he has read the forgoing Complaint, knows the contents thereof, and that the facts therein stated are true as he verily believes.

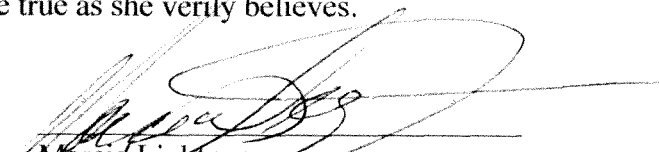

William Lightner

SUBSCRIBED AND SWORN to before me this 31st day of October, 2007.

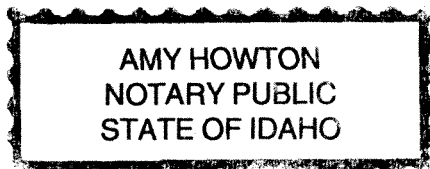




Notary Public for Idaho
Residing at Boise, ID
Commission expires 5-10-2010

Marcia Lightner, being first duly sworn, deposes and says: That she is a Plaintiff in the above entitled action, that she has read the forgoing Complaint, knows the contents thereof, and that the facts therein stated are true as she verily believes.


Marcia Lightner

SUBSCRIBED AND SWORN to before me this 30th day of October 2007.




Notary Public for Idaho
Residing at Boise, ID
Commission expires 5-7-2013

CERTIFICATE OF SERVICE

*I MARCIA LIGHTNER, DO HEREBY SWEAR UNDER PENALTY OF PERJURY
THAT A TRUE AND CORRECT COPY OF THIS CIVIL RIGHTS COMPLAINT, AND
PRELIMINARY INJUNCTION HAS BEEN MAILED TO DEFENDANTS BY CERTIFIED
US MAIL.*

WARDEN JOHN HARDISON et., al., INCLUDING AND IN CARE OF: TRENT
MCINTIRE, TONY AMERSFOORT, JEFF KIRKMAN, AND CO GREENLAND,
ISCI PO BOX 14 BOISE, ID 83707
RANDY BLADES, IDOC 1299 N. ORCHARD STE # 110 BOISE, ID 83706.
STEVE NELSON, IDOC 1299 N. ORCHARD STE # 110 BOISE, ID 83706.

Dated this 14 day of January 2008


Marcia Lightner

NO. 839 FILED
A.M. 839 P.M.

LAWRENCE G. WASDEN
ATTORNEY GENERAL OF IDAHO

FEB 05 2008

J. DAVID NAVARRO, Clerk
By A. GARDEN
DEPUTY

PAUL R. PANTHER, ISB #3189
Lead Deputy, Corrections Section

MARK A. KUBINSKI, ISB #5275
Deputy Attorney General
Idaho Department of Correction
1299 North Orchard, Suite 110
Boise, Idaho 83706
Telephone (208) 658-2097
Facsimile: (208) 327-7485

ORIGINAL

Attorneys for Defendants

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM LIGHTNER,
MARCIA LIGHTNER

Plaintiffs,

v.

JOHN HARDISON, RANDY BLADES,
STEVE NELSON, JEFF KIRKMAN,
TRENT McINTIRE, TONY
AMERSFOOT, C/O GREENLAND,

Defendants.

Case No. CV OC 0720193

ANSWER AND JURY DEMAND

Come Now Defendants, by and through undersigned counsel and hereby answer and respond to Plaintiff's verified Civil Rights Complaint ("Complaint") on file in this action. Defendants deny each and every allegation in Plaintiffs' Complaint, unless specifically and expressly admitted herein.

ANSWER AND JURY DEMAND--1

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1. Answering the allegations contained in Paragraph 1, Defendants admit only that Plaintiff William Lightner is presently incarcerated at ISCI.

2. Answering the allegations contained in Paragraph 2, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

3. Answering the allegations contained in Paragraph 3, Defendants admit that Defendant Hardison is the Warden at ISCI and to the extent he was acting within the course and scope of his employment, he was acting under color of state law. Defendants further admit that as Warden, Defendant Hardison is the supervisor of ISCI staff; however, Defendants deny any characterization or implication that by virtue of his position Defendant Hardison is vicariously liable for any alleged conduct of his staff.

4. Answering the allegations contained in Paragraph 4, Defendants admit that Defendant Blades was previously the Warden at ISCI and to the extent he was acting within the course and scope of his employment, he was acting under color of state law.

5. Answering the allegations contained in Paragraph 5, Defendants admit that Defendant Nelson was previously a Deputy Warden at ISCI and to the extent that he was acting within the course and scope of his employment, he was acting under color of state law.

6. Answering the allegations contained in Paragraph 6, Defendants admit that Defendant Kirkman was previously an assistant to the Warden and to the extent that he was acting within the course and scope of his employment, he was acting under color of state law. Defendants further admit that Defendant Kirkman had some involvement regarding Plaintiffs' visitation issues.

7. Answering the allegations contained in Paragraph 7, Defendants admit that Defendant McIntire is an IDOC employee and to the extent that he was acting within the course and scope of his employment, he was acting under color of state law.

8. Answering the allegations contained in Paragraph 8, Defendants admit that Defendant Amersfoot is an IDOC employee and to the extent that he was acting within the course and scope of his employment, he was acting under color of state law.

9. Answering the allegations contained in Paragraph 9, Defendants admit that Defendant Greenland is an IDOC employee and to the extent that he was acting within the course and scope of his employment, he was acting under color of state law.

10. Answering the allegations contained in the Paragraph labeled "Jurisdiction," Defendants admit the Court has jurisdiction pursuant to Idaho Code § 1-705; however, Defendants deny that Idaho Code § 18-310(1) provides a basis for jurisdiction.

11. Answering the allegations contained in Paragraph 10, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

12. Answering the allegations contained in Paragraph 11, Defendants admit Plaintiff Marcia Lightner was arrested on or about April 10, 2007. With respect to the remaining allegations, however, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

13. Answering the allegations contained in Paragraph 12, Defendants admit only that on or about April 12, 2007, Plaintiff Marcia Lightner's visitation privileges were suspended.

14. Answering the allegations contained in Paragraph 13, Defendants admit only that after approximately three months of suspension, Plaintiff Marcia Lightner's visitation privileges were reinstated.

15. Answering the allegations contained in Paragraph 14, Defendants admit only that on or about October 1, 2007, Plaintiff Marcia Lightner's visitation privileges were suspended. Defendants deny all remaining allegations contained in this paragraph.

16. Defendants deny the allegations contained in Paragraphs 15 and 16.

17. Defendants admit the allegations contained in Paragraph 17.

18. Defendants deny the allegations contained in Paragraphs 18, 19, 20, and 21.

19. Answering the allegations contained in Paragraph 22, Defendants admit the allegations contained in the first sentence thereof. Defendants deny all remaining allegations contained in this paragraph.

20. Defendants deny the allegations contained in Paragraphs 23 and 24.

21. Answering the allegations contained in Paragraph 25, Defendants admit only that Plaintiffs were not given a hearing prior to suspension of Plaintiff Marcia Lightner's visitation privileges. Defendants deny all remaining allegations contained in this paragraph, specifically including any characterization or implication that Plaintiffs had a due process right in their visiting privileges.

22. Defendants deny the allegations contained in Paragraph 26.

23. Answering the allegations contained in Paragraph 27, Defendants admit only that Plaintiff Marcia Lightner previously worked for an IDOC contract vendor. With respect to the remaining allegations, however, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

24. Defendants deny the allegations contained in Paragraph 28.

25. Answering the allegations contained in Paragraph 29, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

26. Defendants deny the allegations contained in Paragraph 30.

27. Answering the allegations contained in Paragraph 31, with respect to the first sentence, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same. Defendants deny all remaining allegations contained in this paragraph.

28. Defendants deny the allegations contained in Paragraphs 32, 33, 34, and 35.

29. Defendants deny the allegations contained in Paragraph 36.

30. Defendants admit the allegations contained in Paragraph 37.

31. Answering the allegations contained in Paragraph 38, Defendants admit only that Plaintiff Marcia Lightner's visitation privileges were temporarily reinstated. Defendants deny all remaining allegations contained in this paragraph.

32. Answering the allegations contained in Paragraph 39, Defendants admit the allegations contained in the first sentence thereof. Defendants deny all remaining allegations contained in this paragraph.

33. Answering the allegations contained in Paragraph 40, Defendants admit that Plaintiff's had some contact with IDOC officials regarding their visitation privileges; however, Defendants deny any characterization or implication that Plaintiffs have exhausted the administrative grievance process.

34. Defendants deny the allegations contained in Paragraph 41.

35. Answering the allegations contained in Paragraph 42, Defendants admit only that Plaintiffs filed a notice of tort claim prior to filing this action.

36. Defendants deny the allegations contained in Paragraphs 43 and 44.

37. Answering the allegations contained in Paragraph 45, Defendants state that such allegations consist of conclusory statements to which no response is required. To the extent a response is deemed necessary, the allegations are denied.

38. Defendants deny the allegations contained in Paragraphs 46, 47, 48, and 49.

39. Defendants deny the allegations contained in Paragraph 50, including subparagraphs A through F, thereof.

FIRST DEFENSE

Defendants have not been able to engage in sufficient discovery necessary to learn all of the facts and circumstances relating to the matters described in Plaintiffs' Complaint and therefore request the Court to permit Defendants to amend their Answer

and assert additional affirmative defenses or abandon affirmative defenses once discovery has been completed.

SECOND DEFENSE

That Plaintiffs' Complaint fails to state a cause of action against the Defendants upon which relief can be granted and should therefore be dismissed pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure.

THIRD DEFENSE

That the allegations contained in the Plaintiffs' Complaint do not rise to the level of a deprivation of rights that are protected by the Constitution or any of the legal provisions referred to in the Plaintiffs' Complaint.

FOURTH DEFENSE

That Defendants acted in a reasonable and prudent fashion satisfying any duty, if any, that they owed under the rules, regulations, statutes, ordinances, customs, policies and usages the State of Idaho and/or the United States of America.

FIFTH DEFENSE

That Defendants are immune from liability because the acts or omissions complained of, if any, were done by Defendants in good faith, with honest, reasonable belief that such actions were necessary and lawful at the time they occurred.

SIXTH DEFENSE

That Defendants are immune, or have qualified immunity, to the allegations contained in the Plaintiffs' Complaint.

SEVENTH DEFENSE

All general immunities statutory or otherwise applicable.

EIGHTH DEFENSE

Plaintiffs have failed to exhaust the available administrative remedies, and otherwise failed to comply with available administrative remedies.

NINTH DEFENSE

To the extent that the Plaintiffs are asserting state law claims, the liability, if any, of Defendants for any state law claims or causes of action is limited pursuant to the provisions of the Idaho Tort Claims Act. In asserting this defense, Defendants are in no way conceding or admitting liability.

TENTH DEFENSE

To the extent that the Plaintiffs are asserting state law claims against Defendants, some or all of such claims are barred since they arise out of and/or stem from activities for which Defendants are immune from liability by virtue of the provisions of the Idaho Tort Claims Act.

ELEVENTH DEFENSE

That Defendants are not liable in litigation pursuant to 42 U.S.C. § 1983, for any injury caused by the act or omission of another person under the theory of *respondeat superior*.

TWELFTH DEFENSE

That the claims and damages set forth in the Plaintiffs' Complaint are barred by the doctrine of unclean hands.

THIRTEENTH DEFENSE

To the extent that the Plaintiffs are asserting state law claims against Defendants, some or all of such claims are barred by the failure of the Plaintiffs to comply with the Idaho Tort Claims Act.

FOURTEENTH DEFENSE

That Plaintiffs have failed to comply with the bonding requirement set forth in Idaho Code § 6-610.

RULE 11

Plaintiffs' claims are brought frivolously and unreasonably and are not well grounded in fact or law and Defendants are entitled to sanctions against Plaintiffs pursuant to Rule 11 of the Idaho Federal Rules of Civil Procedure.

JURY DEMAND

Defendants, pursuant to Rule 38(b) of the Idaho Rules of Civil Procedure, hereby demands a trial by jury.

ATTORNEY FEES

Defendants have been required to retain attorneys in order to defend this action and are entitled to recover reasonable attorney fees pursuant to federal and state law and the Idaho Rules of Civil Procedure.

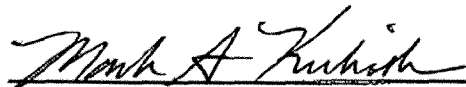
WHEREFORE, Defendants pray for judgment against the Plaintiff as follows:

1. That the Plaintiffs' Complaint be dismissed with prejudice and that the Plaintiffs take nothing thereunder.

2. That the Defendants be awarded their costs, including reasonable attorneys' fees pursuant to state and federal law, including 42 U.S.C. § 1988, Idaho Code §§ 6-918A, 12-117, 12-121, and the Idaho Rules of Civil Procedure.
3. That judgment be entered in favor of Defendants on all claims for relief.
4. For such other and further relief as the Court deems just and equitable under the circumstances.

Respectfully submitted this 4th day of February, 2008.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL


MARK A. KUBINSKI
Deputy Attorney General,
Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2008, I caused to be served a true and correct copy of the foregoing ANSWER AND JURY DEMAND on:

William Lightner, # 41438
ISCI
P.O. Box 14
Boise, ID 83707

Via Prison Mail System

AND

Marcia Lightner
300 E. 41st Street
Garden City, ID 83714

Via U.S. Mail


MARK A. KUBINSKI

NO. _____
A.M. _____ FILED P.M. 3:28

JUN 16 2008

J. DAVID NAVARRO, Clerk
By J. EARLE
DEPUTY

WILLIAM LIGHTNER
ICC #41438 UNIT-C
PO Box 70010
BOISE, ID 83707

MARCIA LIGHTNER
300 E 41ST STREET
GARDEN CITY, ID 83714

PLAINTIFFS PROSE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM LIGHTNER AND MARCIA LIGHTNER)	Case No. <u>CVOC07-20193</u>
)	
Plaintiffs,)	
)	
-vs.-)	AMENDED
)	CIVIL RIGHTS
)	COMPLAINT
)	
JOHN HARDISON, BRENT REINKE, and STEVE)	
NELSON)	
)	
Defendants,)	
_____)	

COMES NOW, William Lightner and Marcia Lightner, Plaintiffs in the above entitled action, pursuant to Idaho Rules of Civil Procedure -15 (a). Plaintiffs are filing this Amended Civil Rights Complaint on 16 June 2008, per the order signed by the Honorable Judge Ronald Wilper on 12 June,2008.

FIRST AMENDED CIVIL RIGHTS COMPLAINT

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PARTIES

Plaintiffs

1. William Lightner is a citizen of Idaho, presently residing at ISCI P. O. Box 14 Boise, ID. 83707.
2. Marcia Lightner is a citizen of Idaho presently residing at 300 E 41st Street Garden City, ID. 83714.

Defendants

3. Brent Reinke, is a citizen of Idaho, who's address is IDOC 1299 N. Orchard Ste #110 Boise, ID 83706. At the time the claim alleged in this complaint arose, the defendant as acting under the color of the State law. In capacity as Director of the IDOC.
4. John Hardison is a citizen of Idaho, who's address is ISCI P.O. Box 14 Boise ID. 83707. At the time the claim alleged in this compliant arose, the defendant was acting under the color of the State law. In the capacity of ISCI Warden. He is ultimately responsible for the events and actions of staff at ISCI.
5. Steve Nelson is a citizen of Idaho, who's address is IDOC 1299 N. Orchard Ste #110 Boise, ID 83706. At the time of the claim alleged in this complaint arose, the Defendant was acting under the color of the State law in the capacity of the ISCI Deputy Warden of Operations.

JURISDICTION

Jurisdiction is asserted pursuant to IC-5-201 ETSEG; 42 USC 1983

NATURE OF THE CASE

10. William and Marcia Lightner have been legally married since 1997 (11 years) and the marriage license was approved and notarized by IDOC personnel.
11. Marcia Lightner was arrested by information on or about 10 April 2007 and released by the Court on bail.
12. On or about 12 April 2007, While signing into visiting, Marcia Lightner was informed by Steve Nelson that do to her recent arrest her visiting privileges were suspended indefinitely.
13. This suspension continued for 10 weeks, while Randy Blades was ISCI Warden. After appealing the issue to Warden Blades by writing him a letter of explanation about the arrest and unjust actions taken against their visiting, Warden Blades reinstated the Lightner's visiting. He had his assistant, Jeff Kirkman contact Marcia Lightner informing her that she was again approved by the warden to visit without any restrictions. There were NO visiting issues or complaints about the Plaintiffs behavior during their visits after the reinstatement by Warden Blades.
14. As of 1 October 2007 without further incident or conflict, the new and current Warden Hardison again suspended Marcia Lightner's visiting privileges with her husband do to her April 07 arrest. Warden Hardison contacted Marcia Lightner on said day and informed her personally that her visiting was suspended do to the April

7 arrest. Marcia Lightner told him that she had not been found guilty of any crime and this action is a violation of her due process rights.

15. When Warden Hardison terminated the Plaintiffs visits 1 October 2008 prior to any conviction of a felony or misdemeanor, he deprived the Plaintiffs of the right to Consortium upon this termination he executed, which is a violation of a Constitutional Right to husband and wife.
16. On or about 2 October 2007, Maria Lightner contacted the IDOC headquarters for an Appointment with Director Reinke on the suspension of their visiting, and was referred to the IDOC investigation department. After being denied an appointment with the Director, Marcia Lightner mentioned of what took place to the investigator and she was told that Warden Hardison had the official say as to the situation and they would not reverse the decision. The investigator commented that Marcia Lightner had become a security risk. Marcia Lightner then replied that she had not been considered a security risk by Warden Blades, and wanted to know what had happened for them to consider this risk now when it did not apply or seem to be an issue when Warden Blades reinstated the visiting for the Plaintiffs. The response was that Warden Hardison had the option per policy of the IDOC to terminate the visiting and that is what he choose to do. Marcia Lightner mentioned that she was not their inmate, and said, even inmates get a due process hearing when allegations arise in DOR's. Marcia Lightner mentioned that her due process rights were being violated do to not even having a hearing prior to the suspension. Marcia Lightner was then told that her rights didn't

matter when it came to the security of the institution. Marcia Lightner responded that her rights DID MATTER, and their policy and procedure did not supersede her Constitutional Due Process Rights.

17. Marcia Lightner then contacted former Warden Randy Blades to seek assistance from him as to what he might do to help the situation. Mr. Blades sent Marcia Lightner an e-mail and mentioned to her that he would have to stand by the new warden's decision.
18. From October to current date of 14 April 2008, the Lightners visiting and loss of Consortium is still in violation of the Common Law on their Constitutional Rights
19. On or about 31 March 2008, Marcia Lightner plead guilty to a misdemeanor charge of resisting and obstructing with 2 years probation, one year supervised and one unsupervised.

CAUSE OF ACTION CLAIM I

15. The Plaintiff's allege that Section 13 of the Idaho State Constitution, and United States Constitutional Amendments, 5, 6, 8, and 14 were broken when the Plaintiffs received punishment without Due process and loss of Consortium, and caused cruel and unusual punishment.

SUPPORTING FACTS

16. *"That taking away of privileges is a form of punishment. In the United States a Person is to be presumed innocent until proven guilty."* In the Plaintiff's case, the opposite has been found to be true. Marcia Lightner is being presumed guilty of a crime prior to going to Court, and both plaintiffs are receiving punishment by the Defendant's without having been given a hearing. Even inmates receiving

Disciplinary Offence Reports (DOR's), in the penal system are entitled to a due process hearing. The Lightners are being punished by way of loss of Consortium, by loosing the closest thing they have to a normal setting with each other and that was to visit each week have contact as a married couple should have. It has been said, and is a well known that to keep a family union together, it is vitally important to share time together. Also to functionally rehabilitate inmates, it is necessary to have family support. To deprive William of his right to visit his wife is cruel and unusual when due process "A Constitutional Right" is ignored.

17. Hardison quotes policy 604 which is (NOT LAW), but which states:

"Termination of Visiting Privileges, Visiting privileges may be terminated at the discretion of the facility head or designee for any length of time, including Permanently, for violation or attempted violation of any state or federal law, any board rule, policy and procedure. SOP, field memoranda, or failure to follow staff instructions (emphases added)."

18. Lightners claim that their Due Process Rights and loss of Consortium are being violated by receiving a punishment prior to a conviction, or even a hearing. Due process is a guaranteed Constitutional Right the Plaintiff's are entitled to. Lightners also claim that Policy 604 does not even mention a due process hearing. If this policy is to be interpreted that due process is not necessary, then it violates the entire judicial system, and should be deemed an illegal policy.

19. It is clear that the Lightners had an established visiting schedule in which they visited three times each week with out incident. To now initiate a visiting restriction on the Lightners served no legitimate Pena logical objectives. In other words, there was no legitimate governmental interest present to over ride the Lightners Constitutional rights.
20. Marcia Lightner had passed the adequate procedural safeguards prison officials used when they granted her normal visiting privileges. Each year she renewed her application and was approved. To take away those privileges from an incident unrelated to the prison, in which had no baring on her visiting without due process, is punishment and a United States Constitutional Amendment 14 violation.
21. Lightner's claim that Marcia's visiting privileges could have been taken if she was found guilty by a Court of law. But to have her visits suspended without due process of law and the loss of Consortium is a violation of their Constitutional Rights.
22. Hardison's memo goes on to say "*Pending the outcome of her felony charges she may reapply for visiting.*" In essence, Hardison is openly and in writing, admitting that he is fully aware that Lightner has not yet been accorded a due process hearing in a Court of Law. He has taken it upon himself to be the Judge and executioner, to place sentencing upon the Lightners without holding the body of authority to do so.
23. Hardison's position (As he puts it) is to use discretion as being the facility head, he is not the judge, jury and executioner. His position requires him to review

the facts of security issues to the facility and the Lightner's claim there are NO security issues concerning their Visiting. When Marcia Lightner never posed a risk to the institution prior to her arrest, or since her reinstatement from warden Blades. No special circumstances exist that would warrant the disregard of due process.

24. To bar the Lightner's from visiting with each other, causes distress and mental anguish from the separation. Violating their due process rights and deprives the Lightners the right to Consortium is not only cruel and unjust punishment, it also inflicts injury to the survival of their marriage and has caused depression and health issues that normally would not have otherwise arisen. The suspension of their visitation was an a typical and significant hardship in relation to the ordinary incidents of prison life. United Stated Constitutional Amendment 14.
25. The Lightner's did not receive any written notification prior to the suspension. They did not receive a hearing, nor were they afforded an appeal procedure. While Prison inmates do not have a right to visitation, both visitors and inmates must be given the right to administrative in judicial review of such restrictions.

CAUSE OF ACTION CLAIM II

26. The Lightner's also claims that the termination of their visiting privileges is not just due to Marcia's pending charge, but was aimed directly as a form of harassment and retaliation by certain IDOC officers that has been on going for many years. This conduct violated Marcia's rights to be presumed innocent until proven guilty under United States Constitutional Amendments, Fifth, Sixth and Eighth.

SUPPORTING FACTS

27. The Lightner's married in 1997. This was frowned upon, because Marcia Lightner had previously worked at Swanson's Commissary as a contract vender, (Not a State Employee).
28. Even after they were married, out of just pure meanness, the Lightners were denied visiting privileges for 2 years.
29. Marcia Lightner had to hire an attorney to assist them in getting their visiting approved. After 5 months of legal intervention, the Lightners were given their visiting privileges. But to continue the harassment, they were separated with a glass partition for another year. It was then a total of 3 years and 5 months of no contact and normal interaction before the Lightner's were given normal visiting privileges.
30. Once normal visiting was approved, the warden, out of continued harassment and retaliation transferred William to ICC, the newly built correctional facility in Kuna Idaho where he was severely beaten and locked down into segregation for seven (7) more months that caused, again, another separation with the Lightners visits.
31. After seven months of abuse at ICC Marcia Lightner followed her husband to Orofino, when he was transferred out of ICC She rented a home and started School in Lewiston. This did not deter the prisons attempt to keep the Lightners separated. This time they moved William to a county jail at the other side of the State in Idaho Falls ID. That act caused another 11 months of separation before William was eventually moved back to ICIO.

32. For eleven (11) years, State prison officials have harassed and attempted to separate the Lightner's. This has caused mental torment, anguish, and depression, not to mention the cost involved.
33. Marcia Lightner poses no security risk. It is simply harassment to now again suspend her visits in the name of security, from an alleged incident that was not even at or connected to the prison.
34. The Lightners assert that their visitation was suspended for reasons other than Marcia's pending charge. That being, retaliation against the Lightners because they exercised their fundamental rights perfected by the Constitution to address other issues they have pending in the courts.
35. The 14th Amendment states in part "*nor shall any State deprive any person of life, liberty, or property, with out due process of law.*" The Petitioners claim that Marcia's visitation in liberty interest was interfered with by ISCI officials with out due Process, and the Petitioners loss of Consortium was being done in retaliation. Consequently, this imposes a typical and significant hardship on the Lightner's Marriage in relation to the ordinary incidents of prison life.

CAUSE OF ACTION CLAIM III

36. Claim three (3) is also a violation of Idaho State Constitution Article 13. It States "*No person shall be twice put in jeopardy for the same offence*" The Lightners visits were suspended for four (4) months in April for Marcia's arrest. To now suspend them again for the same arrest is Double Jeopardy.

SUPPORTING FACTS

37. The Lightner's were denied visiting from 12 April, 2007 until 20 July, 2007 due to Marcia's 10 April 2007 arrest. Then denied again on 1 October 2007 until this present date.
38. After having missed 41 visits. Marcia appealed the legality of the suspension to Warden Randy Blades. Warden Blades, after concern and reconsideration, reinstated their visiting privileges and Marcia was notified by telephone from Jeff Kirkman, that she could resume her visiting with her husband with no restrictions. Jeff Kirkman mentioned that she would need to keep him up to date of any changes in her case. Marcia Lightner did as he asked.
39. Upon replacing Randy Blades as warden, John Hardison again suspended Lightners visits for the same April incident. Having lost visiting privileges once without due process was bad enough but to now lose them a second time for the same offence is Double Jeopardy.

PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

40. The Lightners have sought informal relief from the appropriate administrative Officials by talking personally, and on the phone to Prison officials when their visits Were Suspended. Marcia Lightner did contact the IDOC for relief with the violation and was refused and turned away with no resolution to the issues of her concerns. She was just told that her Rights did not matter to them,

41. As of the suspension inflicted by Warden Hardison 1 October 2007 the Plaintiffs have exhausted the prison grievance system and making appeals with the Corporate IDOC offices. No relief was given. (see attached grievances)

42. When all efforts failed to get the visiting reinstated, The Lightners filed a tort claim at the Secretary of State's Office, and then this civil action.

43. Plaintiffs demand trial by jury.

-PRAYER FOR RELIEF-

Plaintiffs Pray the Court to:

(a) Accept Jurisdiction of the case;

(b) That the Court order:

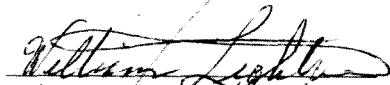
1. Steve Nelson, \$20,000 plus additional \$2500.00 per visit, to be calculated per total loss up to the time the visits are reinstated.
2. John Hardison, \$50,000.00 plus additional \$5000. 00 per visit, to be calculated per total loss up to the time the visits are reinstated.
3. Director Renke, \$50,000.00 plus additional \$5000.00 per visit, to be calculated per total loss up to the time visits are reinstated.

(c) That while incarcerated, the Court orders William Lightner #41438 will not be moved from his current housing assignment. If he is again moved, it would have to be taken as a serious form.

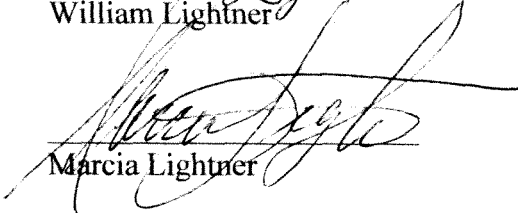
of retaliation do to filing of this law suit. William Lightner safe and doing fine at his current housing at ISCI. (Although this amended complaint mentions that William Lightner not be moved, The IDOC has moved him, in April 2008, and He does take this as a retaliatory action because of filing this law suit.)

- (d) That the Court order the Lightners receive normal visiting privilege equal to, other visitors and with out harassment and retaliation. And that to deny visiting without just cause would be considered a contempt of court.
- (e) That the Court order the IDOC to change their visiting Policy and Procedures so that they reflect Constitutional standards.
- (f) That the Court order defendants to pay all courts costs and fees in this case and attorneys fees if counsel makes an appearance;
- (g) Anything else the Court feels the Lightners are due or entitled to.
- (h) Finally, that these issues be heard and determined by a jury.

Dated this 16 day of June 2008


William Lightner

Dated this 16 day of June 2008


Marcia Lightner

NO. _____
A.M. _____ FILED 3:53

LAWRENCE G. WASDEN
ATTORNEY GENERAL OF IDAHO

JUL 01 2008

PAUL R. PANTHER, ISB #3189
Lead Deputy, Corrections Section

J. DAVID NAVARRO, Clerk
By E. CHILD
DEPUTY

MARK A. KUBINSKI, ISB #5275
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Attorneys for Defendants

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

**WILLIAM LIGHTNER, and
MARCIA LIGHTNER,**

Plaintiffs,

v.

**JOHN HARDISON, STEVE NELSON,
and BRENT REINKE,**

Defendants.

Case No. CV OC 0720193

**ANSWER TO AMENDED
COMPLAINT AND JURY
DEMAND**

Come Now Defendants, by and through undersigned counsel and hereby answer and respond to Plaintiff's Amended Civil Rights Complaint ("Amended Complaint") on file in this action. Defendants deny each and every allegation in Plaintiffs' Amended Complaint, unless specifically and expressly admitted herein.

1. Defendants deny the allegations contained in Paragraph 1.

ANSWER TO AMENDED COMPLAINT AND JURY DEMAND--1

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2. Answering the allegations contained in Paragraph 2, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

3. Answering the allegations contained in Paragraph 3, Defendants admit that Defendant Reinke is the Director of the IDOC and to the extent he was acting within the course and scope of his employment, he was acting under color of state law.

4. Answering the allegations contained in Paragraph 4, Defendants admit that Defendant Hardison is the Warden at ISCI and to the extent he was acting within the course and scope of his employment, he was acting under color of state law. Defendants further admit that as Warden, Defendant Hardison is the supervisor of ISCI staff; however, Defendants deny any characterization or implication that by virtue of his position Defendant Hardison is vicariously liable for any alleged conduct of his staff.

5. Answering the allegations contained in Paragraph 5, Defendants deny the first sentence thereof. With respect to the remaining allegations, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

6. Answering the allegations contained in the Paragraph labeled "Jurisdiction," Defendants admit the Court has jurisdiction pursuant to 42 U.S.C. § 1983; however, Defendants deny that Idaho Code § 5-201 provides a basis for jurisdiction.

7. Answering the allegations contained in Paragraph 10, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

8. Answering the allegations contained in Paragraph 11, Defendants admit Plaintiff Marcia Lightner was arrested on or about April 10, 2007. With respect to the remaining allegations, however, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

9. Answering the allegations contained in Paragraph 12, Defendants admit only that on or about April 12, 2007, Plaintiff Marcia Lightner's visitation privileges were suspended.

10. Answering the allegations contained in Paragraph 13, Defendants admit only that after approximately three months of suspension, Plaintiff Marcia Lightner's visitation privileges were reinstated. Defendants deny all remaining allegations contained in this paragraph.

11. Answering the allegations contained in Paragraph 14, Defendants admit only that on or about October 1, 2007, Plaintiff Marcia Lightner's visitation privileges were suspended. With respect to the remaining allegations, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

12. Defendants deny the allegations contained in Paragraph 15.

13. Answering the allegations contained in Paragraphs 16 and 17, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

14. Defendants deny the allegations contained in Paragraph 18.

15. Answering the allegations contained in Paragraph 19, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

16. Defendants deny the allegations contained in Paragraph 15 [20] and 16 [21].

17. Defendants admit the allegations contained in Paragraph 17 [22].

18. Defendants deny the allegations contained in Paragraphs 18 [23], 19 [24], 20 [25], and 21 [26].

19. Answering the allegations contained in Paragraph 22 [27], Defendants admit the allegations contained in the first sentence thereof. Defendants deny all remaining allegations contained in this paragraph.

20. Defendants deny the allegations contained in Paragraphs 23 [28] and 24 [29].

21. Answering the allegations contained in Paragraph 25 [30], Defendants admit only that Plaintiffs were not given a hearing prior to suspension of Plaintiff Marcia Lightner's visitation privileges. Defendants deny all remaining allegations contained in this paragraph, specifically including any characterization or implication that Plaintiffs had a due process right in their visiting privileges.

22. Defendants deny the allegations contained in Paragraph 26 [31].

23. Answering the allegations contained in Paragraph 27 [32], Defendants admit only that Plaintiff Marcia Lightner previously worked for an IDOC contract vendor. With respect to the remaining allegations, however, Defendants lack sufficient

knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

24. Defendants deny the allegations contained in Paragraph 28 [33].

25. Answering the allegations contained in Paragraph 29 [34], Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

26. Defendants deny the allegations contained in Paragraph 30 [35].

27. Answering the allegations contained in Paragraph 31 [36], with respect to the first sentence, Defendants lack sufficient knowledge or information necessary to form a belief as to the truth of the matters asserted, and therefore presently deny the same.

Defendants deny all remaining allegations contained in this paragraph.

28. Defendants deny the allegations contained in Paragraphs 32 [37], 33 [38], 34 [39], 35 [40] and 36 [41].

29. Answering the allegations contained in Paragraph 37 [42], Defendants admit the allegations contained in the first sentence thereof. Defendants deny all remaining allegations contained in this paragraph.

30. Answering the allegations contained in Paragraph 38 [43], Defendants admit only that Warden Blades temporarily reinstated Plaintiffs' visiting privileges. Defendants deny all remaining allegations contained in this paragraph.

31. Answering the allegations contained in Paragraph 39 [44], Defendants admit only that Plaintiffs' visiting privileges were suspended by Defendant Hardison. Defendants deny all remaining allegations contained in this paragraph.

32. Answering the allegations contained in Paragraph 40 [45], Defendants admit only that Plaintiffs had some contact with IDOC officials regarding their visitation privileges; however, Defendants deny any characterization or implication that Plaintiffs have exhausted the administrative grievance process.

33. Defendants deny the allegations contained in Paragraph 41 [46].

34. Answering the allegations contained in Paragraph 42 [47], Defendants admit only that Plaintiffs filed a notice of tort claim prior to filing this action.

35. Answering the allegations contained in Paragraph 43 [48], Defendants acknowledge that Plaintiffs have demanded a jury trial.

36. Answering the allegations contained in the Paragraph labeled "Prayer for Relief," Defendants deny all allegations contained in subparagraphs (a) through (h) thereof.

FIRST DEFENSE

Defendants have not been able to engage in sufficient discovery necessary to learn all of the facts and circumstances relating to the matters described in Plaintiffs' Amended Complaint and therefore request the Court to permit Defendants to amend their Answer and assert additional affirmative defenses or abandon affirmative defenses once discovery has been completed.

SECOND DEFENSE

That Plaintiffs' Amended Complaint fails to state a cause of action against the Defendants upon which relief can be granted and should therefore be dismissed pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure.

THIRD DEFENSE

That the allegations contained in the Plaintiffs' Amended Complaint do not rise to the level of a deprivation of rights that are protected by the Constitution or any of the legal provisions referred to in the Plaintiffs' Amended Complaint.

FOURTH DEFENSE

That Defendants acted in a reasonable and prudent fashion satisfying any duty, if any, that they owed under the rules, regulations, statutes, ordinances, customs, policies and usages the State of Idaho and/or the United States of America.

FIFTH DEFENSE

That Defendants are immune from liability because the acts or omissions complained of, if any, were done by Defendants in good faith, with honest, reasonable belief that such actions were necessary and lawful at the time they occurred.

SIXTH DEFENSE

That Defendants are immune, or have qualified immunity, to the allegations contained in the Plaintiffs' Amended Complaint.

SEVENTH DEFENSE

All general immunities statutory or otherwise applicable.

EIGHTH DEFENSE

Plaintiffs have failed to exhaust the available administrative remedies, and otherwise failed to comply with available administrative remedies.

NINTH DEFENSE

To the extent that the Plaintiffs are asserting state law claims, the liability, if any, of Defendants for any state law claims or causes of action is limited pursuant to the

provisions of the Idaho Tort Claims Act. In asserting this defense, Defendants are in no way conceding or admitting liability.

TENTH DEFENSE

To the extent that the Plaintiffs are asserting state law claims against Defendants, some or all of such claims are barred since they arise out of and/or stem from activities for which Defendants are immune from liability by virtue of the provisions of the Idaho Tort Claims Act.

ELEVENTH DEFENSE

To the extent that the Plaintiffs are asserting state law claims against Defendants, some or all of such claims are barred by the failure of the Plaintiffs to comply with the Idaho Tort Claims Act.

TWELFTH DEFENSE

That Defendants are not liable in litigation pursuant to 42 U.S.C. § 1983, for any injury caused by the act or omission of another person under the theory of *respondeat superior*.

THIRTEENTH DEFENSE

That the claims and damages set forth in the Plaintiffs' Amended Complaint are barred by the doctrine of unclean hands.

FOURTEENTH DEFENSE

That Plaintiffs have failed to comply with the bonding requirement set forth in Idaho Code § 6-610.

FIFTEENTH DEFENSE

That some or all of Plaintiffs' claims for declaratory and injunctive relief are moot.

SIXTEENTH DEFENSE

That Plaintiffs have failed to mitigate their damages, if any.

RULE 11

Plaintiffs' claims are brought frivolously and unreasonably and are not well grounded in fact or law and Defendants are entitled to sanctions against Plaintiffs pursuant to Rule 11 of the Idaho Federal Rules of Civil Procedure.

JURY DEMAND

Defendants, pursuant to Rule 38(b) of the Idaho Rules of Civil Procedure, hereby demands a trial by jury.

ATTORNEY FEES

Defendants have been required to retain attorneys in order to defend this action and are entitled to recover reasonable attorney fees pursuant to federal and state law and the Idaho Rules of Civil Procedure.

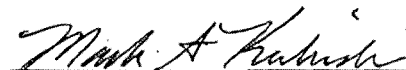
WHEREFORE, Defendants pray for judgment against the Plaintiff as follows:

1. That the Plaintiffs' Amended Complaint be dismissed with prejudice and that the Plaintiffs take nothing thereunder.
2. That the Defendants be awarded their costs, including reasonable attorneys' fees pursuant to state and federal law, including 42 U.S.C. § 1988, Idaho Code §§ 6-918A, 12-117, 12-121, and the Idaho Rules of Civil Procedure.
3. That judgment be entered in favor of Defendants on all claims for relief.

4. For such other and further relief as the Court deems just and equitable under the circumstances.

Respectfully submitted this 1st day of July, 2008.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



MARK A. KUBINSKI
Deputy Attorney General,
Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of July, 2008, I caused to be served a true and correct copy of the foregoing ANSWER TO AMENDED COMPLAINT AND JURY DEMAND on:

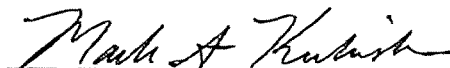
William Lightner, # 41438
Idaho Correctional Center
P.O. Box 70010
Boise, ID 83707

Via Prison Mail System

AND

Marcia Lightner
300 E. 41st Street
Garden City, ID 83714

Via U.S. Mail



MARK A. KUBINSKI

WILLIAM LIGHTNER #41438
ICC UNIT-C
PO BOX 70010
BOISE, IDAHO 83707

MARCIA LIGHTNER
300 E 41st STREET
GARDEN CITY, IDAHO 83714

PLAINTIFFS PRO, SE

NO. _____ FILED _____ 3:40
A.M. _____ P.M.

DEC 09 2008

J. DAVID NAVARRO, Clerk
By J. RANDALL
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM LIGHTNER , MARCIA LIGHTNER)

Plaintiffs,)

-vs.-)

JOHN HARDISON, BRENT REINKE, STEVE)
NELSON,)

Defendants,)

Case No. CV OC 07- 20193

**RESPONSE AND OBJECTION TO
STATES' MOTION FOR SUMMARY
JUDGMENT WITH AFFIDAVITS
IN SUPPORT**

COMES NOW, William and Marcia Lightner, Plaintiff's Pro se, hereby submits their "RESPONSE AND OBJECTION TO STATES MOTION FOR SUMMARY JUDGMENT." Based on the reasons stated below, Plaintiffs request that the court denies the Motion for Summary Judgment, and this case proceed to trial.

I. INTRODUCTION

This action is brought pursuant to 42 U.S.C. § 1983. Plaintiff William Lightner is an Idaho State prisoner. Plaintiff Marcia Lightner is his wife. Plaintiffs (William and Marcia) claim that their constitutional rights were violated when Idaho Department of Correction (IDOC) officials terminated Marcia's visiting privileges without Due Process of Law, and then violated the Double Jeopardy clause, by suspending the

Lightners visitation a second time for the same original offence.

II. STATEMENT OF FACTS

1. William is an IDOC prisoner who was housed at the Idaho State Correctional Institution (ISCI) throughout the time frame of this claim. (See Plaintiffs' Affidavits in Support).
2. Marcia was a regular visitor, visiting her husband, William three (3) times a week allowed and approved by ISCI. (See Exhibit H of Hardison's Affidavit for a copy of Marcia's visiting log).
3. On 10 April 2006 Marcia was arrested at her home and released from custody on 11 April 2006. subsequent to that arrest, Warden Blades and Deputy Warden Christensen, suspended Marcia's visiting privileges.
4. After three months of suspended visits, and personal communication between Marcia and Warden Blades, Plaintiffs visits were reinstated by warden Blades in July 2007.
5. Around October 2007, Warden Hardison had replaced Warden Blades as warden at ISCI. On 1 October 2007 Warden Hardison suspended Marcia's visit's a second time for her April arrest, even when requested, a due process hearing was denied regarding the loss of privileges. (See attachment-A, Oct. 1, 2007 correspondence from Hardison terminating visitation).

III SUMMARY JUDGMENT STANDARD

6. Under the Idaho Rules of Procedure, Summary Judgment is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a mater of law. I.R.C.P. 56 (c); Student Loan Fund v. Duerner, 131 Idaho 45, 49, 951 P. 2d. 1272 (1998). The burden falls in the moving party to prove the absence of a genuine issue of material fact. U.D.A.R., Inc v. Sheffer, 134 Idaho 141, 143-44, 997 P. 2d 602 (2000).

IV ARGUMENT

A. *Defendant argues that William's claim is barred due to his failure to exhaust the IDOC grievance process."*

6. ISCI has a grievance procedure. This procedure is contained in IDOC Division of Prisons Standard Operating Procedure 316.02.01.001 (SOP 316). The complete grievance procedure consists of three steps.

- a) Using a "Concern form" to seek out an informal resolution with the staff member closest to the incident.
- b) Complete a "Grievance form" if informal resolution can not be accomplished between the involved parties.

In most instances, Concern forms are sent to various Correctional officers (CO's) or various prison areas (Commissary, Laundry etc). A grievance on the other hand adds a reply from a Sgt. or Lt. and then is either "Granted" or "Modified", by a reviewing authority such as the deputy warden.

c) An "Appeal" to the grievance response to the "Appellate Authority" who is typically the head of the facility, generally referred to as "Warden" who makes the final ruling as the chief appellate authority.

7. In this instance there was no grievance procedure possible. The person most closely related to the incident where the initial concern would be sent, is the same person as the final "Appellate Authority" who was available at ISCI to appeal the Warden's decision to? (See William Lightner's Affidavit in Support)

8. Even if Plaintiff had not pursued the grievance process, Summary Judgment should not be granted, because there are disputed issues of material facts involved that preclude summary judgment. In the case of Harris v.Ford, 32 F. Supp 2d 1109 (D. AK 1999) the court held that where the claim did not relate to prison conditions, the PLRA exhaustion was not required prior to filing a lawsuit. The court ruled that a court's duty to screen prisoner complaints does not require it to do such screening in writing to the defendants, and that the prisoner was not required to exhaust administrative remedies pursuant to the PLRA because his claims did not

relate to prison conditions.

9. In this case the same is true. Plaintiffs are not complaining about prison conditions. They are challenging the constitutional legality of the IDOC Policy and Procedure, and claiming that their constitutional rights were violated due to then questionable Policies.

10. Furthermore, the in-house grievance process could not possibly challenge the validity of IDOC Policy and Procedure, nor determine if Constitutional rights were violated. This is because there are no impartial reviews of the grievances by non-IDOC officials. A blue-shield has been implemented by the defendants that prevent a close inspection of any regulation review.(See Plaintiffs' Affidavits in Support).

11. In the defendants motion for summary judgment they list a number of cases in which summary judgment was granted for lack of exhaustion of a grievance process, yet as they would attempt to lead the court to believe, this is NOT always the case,

12. The district court dismissed a claim of unhealthy air in a prison for failure to exhaust remedies, Bishop v. Lewis 155 F. 3d 1094 (9th cir. 1998). Appellate court reversed and remanded, finding that the PLRA exhaustion of administrative remedies provision did not apply retroactively, and found that the prisoner substantially complied with court order to exhaust internal prison remedies.

13. Mitchell v. Shomig, 969 F. Supp. 487 (N.D. IL 1997): The Court found that cell temperatures ranging from 32° to 50° for extended periods of time violated the Eight Amendment, and the court refused to apply the exhaustion of administrative remedies imposed by the PLRA.

14. Miller v. Thornburgh, 755 F. Supp 980 (D.Ks 1991): The court held that Habeas Corpus petitioner did not have to exhaust all available administrative remedies as such remedies exhausted only where issues involving control and management of a prison were involved, but petitioner was challenging the underlying Constitutional validity of the basis for his transfer and incarceration in another prison.

15. Since the current claim originated actions of the ISCI warden, there was no ISCI grievance process

available. Plaintiffs did the next best thing. Plaintiffs appealed by formal letters and telephone contact calls to the main office at IDOC office and to the Director of prisons Mr. Reinke. Defendant Reinke has stated in both interrogatories answers and verbally that he does not review grievances. Thus, when Hardison terminated Plaintiff's visits with his wife, there was no one to file a grievance appeal to as the regulations clearly state that the warden is the final appellate authority. (See Plaintiffs' Affidavits In Support).

16. Due to the fact that Plaintiffs' suit is not concerning prison conditions (but only the termination of his wife's visitation privileges), has a constitutional issue of material fact, and demonstrates that there is no grievance policy in place to challenge the facilities head appellant authority, with some law supporting claims that have not exhausted the PLRA requirements when circumstances so warrant, Plaintiff William Lighner should not be dismissed from the lawsuit. Plaintiff William Lighner has suffered extreme emotional torment and trauma because of the loss of visitation with his wife. (See Plaintiff's Affidavit In Support).

B. Plaintiffs claim against Defendants Reinke and Nelson.

17. As William Lighner is an incarcerated inmate, his access to grievance concerns and appeals ends with the Warden of the institution he is housed. The warden is the highest "Appellate Authority" as the facility head (Whittington Affidavit #9).

18. With Marcia Lighner's visiting first being suspended 10 April 2006, The grievance process was addressed with Warden Blades, and Marcia's visiting was reinstated by Warden Blades. (See Marcia Lighner's Affidavit in Support).

19. When Warden Hardison took over the position of ISCI Warden to replace Mr. Blades, it was then that Marcia's visiting was suspended again without any additional incident of problems in visiting. There was NO grievance process available, because warden Hardison suspended Marcia's visits by a phone call to Marcia Lighner, then followed this suspension by documentation with a letter signed by warden Hardison that he had

suspended the visits. Being Warden Hardison is considered the final grievance process, and he had already made the decision to suspend the visits, there was no further grievance left for William to do. (See Plaintiffs' Affidavit in Support).

20. Director Reinke was:

- a) aware of the nature of the Lightner's claims
- b) was informed of the issues and concerns.
- c) had the power as an appellate authority to review the claim.

However, Reinke chose to do nothing.

21. As the IDOC Director, it is Reinke's job and responsibility to be an appellant authority on issues involving institutional wardens. Reinke's actions were done deliberately so as to not make him criminally negligent and nor show deliberate indifference.

22. In McDade v. West, 223 F. 3d 1135, 1140 (9th cir.2000): The court held that the employee acted under State law for 1983 purposes "she invoked the power of her office to accomplish the offensive act. Therefore, however improper Ms. West's actions were, they clearly related to the performance of her official duties.

23. When Mr. Reinke refused to meet with Marcia, he invoked the power of his office staff to "Get rid of her" clearly shirking the performance of his official duty. A Director of a governmental agency should always be willing to review any and all issues that he or she is in control of in order to become aware of any unethical or constitutional behavior or abuse of Policy and procedure he or she is directed to up-hold according to law. (See Plaintiffs' Affidavits In Support).

24. Kimes v. Stone, 84 F. 3d 1121, 1127 (9th cir. 1996): The Court held that "conduct by persons acting under color of state law which is wrongfully under 42 USC 1983... Cannot be immunized by State law... and the summary judgment clause of the Constitution insures that the proper construction may be enforced." To not include Director Reinke as a defendant due to his willful ignoring the claim would be clearly contrary to the

intent of 1983, which is to enable a person deprived of their civil rights “to recover full compensation from the governmental officials responsible for those deprivations.” Kimes, Id.

25. Wyatt v. Cole, 112 SCT 1827 (1992): The purpose of 1983 is to deter State actors from using the badge of their authority to deprive individuals of their federally guaranteed and constitutionally protected rights and privileges and to provide relief to victims.

26. Plaintiffs claim that their Constitutional Rights were violated when they were denied a due process hearing, and for the claim of double jeopardy. Plaintiff Marcia Lightner specifically stated to the head of IDOC Jeff Zamuta, officer representing defendant Reinke, that the prison directives of Policy and Procedures were unconstitutional by not including due process procedures. (See Marcia Lightner’s Affidavit In Support).

27. Defendant Reinke is liable since he is the convening authority, is responsible for the actions of Warden under his control, and for the preparation of Policies and Procedures given to the institutions. Mr. Reinke holds a position to assist and assert change under his direction and discretion if change is necessary to assist that institutional integrity and to protect State law. (See William Lightner’s Affidavit In Support).

C. The denial of Mrs. Lightner’s visiting privileges violated her Constitutional Rights.

28. Walker v. Summer, 14 F. 3d 1415 (9th cir. 1994): Facts as to whether inmate was denied right to produce witnesses in his defense at a DOR proceeding violated due process and precludes summary judgment.

29. Nationwide, it has been clearly established that inmates convicted of prison offences are entitled to due process hearings. The Constitution guarantees that a person is entitled to due process before punishment is to be administered. Plaintiffs were denied this fundamental right. Plaintiff Marcia Lightner was punished prior to ever being convicted of any wrongdoing, which flies in the face of the “innocent until proven guilty” standard our laws are based upon. (See Marcia Lightner’s Affidavit In Support).

30. Plaintiffs claim that the loss of visitation privileges is punishment. As such, requires a due process

hearing. Also that IDOC visiting Policies are unconstitutional for not including due process procedures as required by Izatt v. Anderson, U.S. District Court Stipulated Agreement concerning visitation termination procedures.

31. If inmates are entitled to due process for prison rule violation and have lost many of their rights, how much more should Marcia Lightner be entitled to due process before being punished with loss of privileges.

32. In another case dealing with the liberty interest of visitation issues, the court ruled that in order to create a protected liberty interest in the prison context, state regulations must use explicitly mandatory language in connection with the establishment of specific substantive predicates to "Limit Official Discretion", thereby requiring that a particular outcome be reached upon a finding that the relevant criteria was met. See Kentucky DOC v. Thompson, 490 US 454 (1989). See also Smith v. Coughlin, 748 F. 2d 783 (2nd cir. 1984).

33. A prison regulation may infringe or threaten a constitutional interest, as applied to a particular protected expression, if the regulation is legitimately related to penological goals or interests, but the court must balance the importance of the prisoners infringed right against the importance of penological interest and inquire whether the rule is an exaggerated response. Murphy v. Shaw, 195 F. 3d 1121 (9th cir. 1999).

34. It is clear that Warden Blades had no problem complying with the law, and it is obvious that Defendant Hardison's termination of Marcia Lightner's visits was an exaggerated response, or at the least a power-trip Defendant Hardison felt like enjoying. (See Plaintiffs' Affidavit in Support).

35. According to defendants Motion for Summary Judgment, there was an excessive cost of manpower and prison recourses to allow continued visitation, yet a full-time hearing officer is on staff to afford other inmates their Due Process rights at DOR hearings.

36. Plaintiffs had their visits suspended twice for the same alleged offence, and was deprived of liberty without due process which violates the First, Fifth and Fourteenth Amendments to the U.S. Constitution. (See Plaintiffs' Affidavits in Support).

37. Plaintiffs were informed of warden's decision to suspend visitation privileges but were not confronted with any witnesses alleging some form of wrongdoing against them, nor given the opportunity to present witnesses in their behalf, or given the opportunity to have an impartial hearing/review official to challenge Hardison's actions. (See Plaintiffs' Affidavit in Support).

38. To violate a person's rights and privileges and deny husband and wife visitation without just cause, and without due process is cruel and unusual punishment in violation of the 8th Amendment.

39. No State shall deprive any person of their liberty without a due process of law as clearly held by the 14th Amendment, unless there is a clear penological reason. If there was a security concern, then obviously Blades felt it was very slight or he would not have reinstated Plaintiffs' visitation.

40. By administering punishment in taking away Plaintiffs visiting rights and privileges twice of the same alleged offence, and without a due process hearing, defendants violated Plaintiffs 1st, 5th, 8th, and 14th Amendment rights to the U.S. Constitution.

41. Courts have ruled in prior cases that the termination of family visitation to inmates was unconstitutional. Laughter v. Kay, 986 F. Supp 1362 (D. UT 1997), and that due process is required in prison settings Quartararo v. Hey, 113 F. Supp 2d 405 (E. D. NY 2000), see also, Hardaway vb. Kerr, 573 F. Supp 419 (W. D. WI 1983).

D. In this case Defendants are not entitled to qualified immunity.

42. "The substantial defense accorded prison officials does not relieve federal courts from their duty to ensure that prison officials actions are not exaggerated responses to prison concern... (at 1200) and "Prison authorities cannot frame and then improperly discipline prisoners for exercising their constitutional rights." Knecht v. Collins, 903 F. Supp 1193 (S.D. OH 1995).

43. In the case of Guthrie v. Darosa, 1998 WL 22715, at 4 (ND CA 1998) the court held that Defendants must establish that the correctional action taken would have taken place regardless of prisoner's protected

conduct or that the retaliatory act was narrowly tailored to serve legitimate penalogical purpose. Mount Healthy City Board of Education v. Doyle, 429 U.S. 274 (1977).

44. The court affirmed the Supreme Court's decision that the Turner standard applies to all Constitutional claims arising in prison with the exception of 8th Amendment claims. Ward v. Walsh, 1 F. 3d 873 (9th cir 1993).

45. Knowing that even DOR proceedings require a due process hearing, Defendants should have known Plaintiffs were entitled to the same right. The Court held in Johnson v. Coombe, 2001 WL 617539 (S.D. NY 2001) That inmates had a constitutional right to call witnesses, who prison officials refused to call, and any reasonable person involved should have known about the right to call witnesses, the right to present evidence and the right to an impartial hearing examiner. Thus, the case should proceed and no qualified immunity should be available to the officials. (See Plaintiffs' Affidavit in Support).

46. Officials were denied qualified immunity in Verser v. Elvea, 113 F. Supp 2d 1211 (N. D. IL 2000) because, "... a plaintiff need not use magic words like "reckless" or "intentional" to make out a case for deliberate indifference. He must merely plead that the Defendant's behaved in a way that can be construed to show reckless or intentional conduct.

47. When Plaintiff's requested for a due process hearing was denied, defendants willfully and deliberately violated the plaintiff's rights and "therefore is not entitled to immunity.

48. "Clearly Established" does not mean that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of preexisting law the unfaithfulness must be apparent. Wilson v. Layne, 526 US 603, 609 (1999). What is "Clearly Established" is that the Constitution guarantees due process hearings. Only prison officials who have no knowledge are qualified to immunity Smith v. Marcantonio, 910 F. 2d 500 (8th cir. 1990).

49. Cause of Action claim II of Plaintiffs suit was for retaliation. In the case of Bloch v. Ribar, 156 F. 3d 673 (6th cir. 1998) it is clearly established that qualified immunity is inapplicable for retaliation claims. (See

William Lightner's Affidavit in Support).

50. In Armstrong v. Squadrito, 153 F. 3d 564 (7th cir. 1998) Prison officials were not entitled to qualified immunity because executive abuse of power "Shocked the Conscience" in that case, the detainee was denied access to courts for 57 days. In this case however, Defendants intent was to deny due process permanently. Defendants willingly and knowingly violated Plaintiffs rights King v. Beavers, 148 F. 3d 1031 (8th cir. 1998).

51. Under State law, an official and the entity that employs the official may be liable for unlawful acts if the officials know that the act is unlawful or if there is some notice sufficient to put him, as a reasonable man, under duty to investigate the conduct in question. Plaintiffs personally tried to make contact with the Director in order to discuss with officials of the error and unlawful act, but Defendants failed to correct the unlawful act, making them liable for damages. Martinez v. City of Los Angeles, 141 F. 3d 1373 (9th cir. 1998). Lucas v. Parish of Jefferson, 999 F. Supp 839 (E. D. LA 1998). Taylor v. Sullivan, 980 F. Supp 697 (S.D. NY 1997). Dennis v. Thurman, 959 F. Supp 1253 (C. D. CA 1997).

52. Plaintiffs have claimed that the ISCI Policy of not giving a due process hearing violated their rights. In Williams v. Greifinger, 97 F. 3d 699 (2nd cir n1996) "Reasonable Belief" by Defendants that challenged policy did not violate inmates rights does not provide a qualified immunity defense.

53. The case of Lewis v. Sacramento County, 98 F 3d 434 (9th cir, 1996) fits the Plaintiffs current case, whether a governmental official is entitled to qualified immunity turns on a two part inquiry, one of which states:

a) Was the law governing the officials conduct clearly established?

The right of due process is so clearly established that it is included in multiple Amendments of the Bill for Rights. Another claim of the Plaintiffs is that of Double Jeopardy, another well established claim. Defendant Hardison knew that Plaintiffs visits had already been suspended, and knew he was suspending them again for a second time without legitimate penalogical foundation. He also knew that he made the decision and

carried through without affording Plaintiffs the right to due process.

54. The I.D.O.C. takes the position that hearings of any due process are not given when there are concerns of institutional security. However, the Plaintiffs contend that the US Constitution provides Due Process above and beyond any other State Policy and Procedure. A person is innocent until found guilty, and just because Marcia Lightner was charged with a felony, she was not convicted of one, neither at the time of the visiting suspension or at the conclusion of her case. (See Marcia Lightner's Affidavit In Support).

55. The defendants omit a vital point that the U.S. Supreme Court stated in Jones v. Bock, 127 SCT 910 (2007). The Supreme Court stated that the prisons grievance system could be such as to "trip" up the prisoner while they are trying to pursue the grievance process. This is true here as the grievance procedures do not explain how one is to grieve an action made by the highest grievance appellate authority. There is no oversight review of the warden's actions that are available to the Plaintiffs. (See Plaintiffs' Affidavits in Support).

E. Plaintiffs are not alleging a "respondent superior" argument:

56. Defendants argue that Plaintiffs are raising a "respondeat superior" claim. (Page-9 of Defendants' Memorandum). This is simply untrue. Plaintiffs are claiming that Reinke is the supervising authority over the other defendants, and as such knew or should have known that Hardison's actions violated Plaintiffs' rights but failed to make a policy change or take other actions to prevent the foreseeable violations. See Boone v. Elrod, 706 F.Supp. 636, 638 (N.D. Ill. 1989); Strachan v. Ashe, 548 F.Supp. 1193, 1204 (D. Mass. 1982).

57. Plaintiffs are raising a "Supervisor Liability" claim because the evidence herein clearly establishes a strong inference that Reinke knew of the lower officials' unlawful actions and willfully failed to intervene to prevent or correct the unlawful acts. (See Plaintiffs' Affidavit in Support).

F. The policies as applied to Plaintiffs was an exaggerated response:

58. Plaintiffs agree that prison officials have wide latitude in creating regulations governing visitation. However, the regulations 1.) must be evenly enforced and not based upon the whims of an officials personal beliefs; 2.) clearly written so that the prisoner understands the regulations; and 3.) the regulation cannot be used as an exaggerated response to some minor or none existent infraction.

59. Defendant Hardison applied the visiting policy in an exaggerated manner when he over-road Warden Blades' reinstatement of Plaintiffs' visiting. Such exaggerated response has been held unconstitutional in Hargis v. Foster, 312 F3d 404 (9th Cir. 2002). Plaintiffs had been visiting for many month prior to Hardison taking over the Warden position, without incident warranting termination of the visits. (See Plaintiffs' Affidavit in Support).

60. The Defendants' reliance upon Overton v. Bazzetta, 539 US 126 (2003) is not applicable as there is no dispute that they may create reasonable regulations governing visitation.

G. Hardison and Reinke do not have qualified immunity;

61. Hardison cannot claim he did not know that Blades had reinstated Plaintiff's visits after a thorough review of the facts behind the initial termination of Plaintiffs' visits. Once Plaintiffs' visits were reinstated all of Plaintiffs' rights to the liberty interest in visitation kicked into play, and Hardison's termination of the visits after his taking over as Warden was an exaggerated response without legitimate penological concerns. Hargis, supra. (See Plaintiffs' Affidavit in Support).

62. The prison officials can be held liable for money damages if the conduct violated "clearly established statutory or constitutional rights of which a reasonable person would have known." Anderson v. Creighton, 483 US 635, 639 (1987); Harlow v. Fitzgerald, 457 US 800, 818 (1982); Vaughn v. Ricketts, 859 F2d 736 (9th Cir. 1988); Kelly v. Borg, 60 F3d 664, 666 (9th Cir. 1995); Newell v. Sauser, 79 F3d 115, 117 (9th Cir. 1996);

Osolinski v. Kane, 92 F3d 934 (9th Cir. 1996); Armstrong, supra, at pgph. 50 above.

63. Also, as a matter of law, a Court that determines whether defendants can rely on qualified immunity should consider all relevant legal precedent, not just those cases cited by the parties. Elder v. Holloway, 114 SCT 1019 (1994).

H. Plaintiff Marcia Lightner's consortium claim is not barred;

64. Defendants prematurely argue that Plaintiff William Lightner has failed to exhaust his grievances which in turn causes Mrs. Lightner's consortium claim to be barred. As Plaintiffs pointed out above, Plaintiffs pursued every possible exhaustion where available. The Defendants have the burden of "proving that there is an administrative process that would be able to take action in response to [the specific] complaint-action, that is, other than saying, 'Sorry, we can't do anything about it.'" Rahim v. Sheahan, 2001 WL 1263493 at *6-7 and n.3 (N.D. Ill. Oct. 19, 2001); Marvin v. Goord, 255 F3d 40, 43 (2d Cir. 2001).

65. It's been held that Courts should require substantiation that an administrative procedure on its face affords relief for a particular type of complaint before dismissing a prisoner's claim for non-exhaustion. See Westefer v. Snyder, 422 F3d 570, 580 (7th Cir. 2005)(holding that prison officials had not established an available remedy where nothing "clearly identifie[d]" how to challenge certain decisions). Nowhere in the regulations is there an available avenue to grieve warden Hardison's actions since he is the final appellate authority, leaving his action ungrievable. (See Plaintiffs' Affidavit in Support).

66. Therefore, Plaintiff Marcia Lightner's consortium claim are still available and warrant consideration by both this court and the jury. (See Marcia Lightner's Affidavit in Support).

SUMATION

67. Plaintiffs' First, Fifth, and Fourteenth, Amendments of the U.S. Constitution have been violated by the IDOC officials without any remorse. Both Plaintiffs had our visits suspended twice without any due process based upon an alleged charge, in which the IDOC officials took no responsibility for their wrong doing. To continually defy a person due process shows a lack of respect for the law of the land. To hold themselves above the law of the land displays corruption in the body of the government, which itself carries the burden to stand for justice and integrity. When integrity fails within the system, the system does not stand a chance to correct itself. It and all within it will fails all those they are trying to correct because they do not set a good example for the very law they are trying to uphold.

68. Plaintiffs have suffered injury and seek a remedy for those injuries. The Defendants have a history for continued harassment of Plaintiffs by repetitive termination of visits. Continued discovery in this case will prove Plaintiffs' claims are valid and clearly supported.

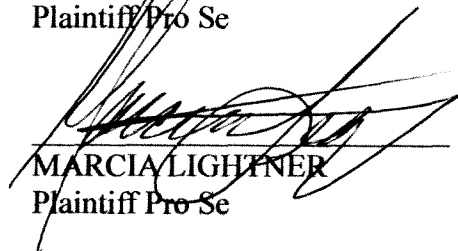
V. CONCLUSION

Wherefore, as Plaintiffs' have clearly identified material issues of fact that preclude summary judgment the Defendants' Motion should be denied and the case scheduled for jury trial.

Respectfully Submitted this 9 day of December, 2008.



WILLIAM LIGHTNER
Plaintiff Pro Se



MARCIA LIGHTNER
Plaintiff Pro Se

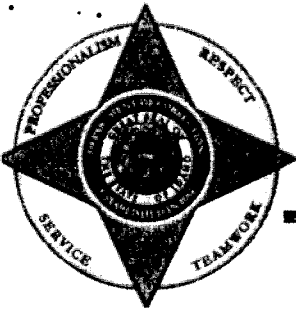
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **RESPONSE AND OBJECTION TO STATES' MOTION FOR SUMMARY JUDGMENT WITH AFFIDAVITS IN SUPPORT** was mailed to:

Mark Kubinski
Deputy Attorney General
Defendants Counsel
IDOC Suite 110
1299 N. Orchard St.
Boise, ID 83706

By placing same in the U.S. Mail system, Dated this 9 day of December, 2008.


MARCIA LIGHTNER



Idaho Department of Correction

"Protecting You and Your Community"

C.L. "BUTCH" OTTER
Governor

BRENT REINKE
Director

Marcia Lightner

~~2080 Pebbleside Way~~ 360 E 41st
Boise, ID 83709 Garden City ID
83714

October 1, 2007

Mrs. Lightner,

I have reviewed the circumstances surrounding your visiting privileges including the arrangement you had with Warden Blades. I regret to inform you that I am reversing the decision to allow you to continue to visit your husband pending the outcome of your pending criminal charges.

My decision is based on what is clearly defined in visiting policy 604 that states:

Termination of Visiting Privileges

Visitation privileges may be terminated at the ***discretion*** of the facility head or designee for any length of time, including permanently, for violation or ***attempted violation*** of any state or federal law, any Board rule, Policy and Procedure, SOP, field memoranda, or failure to follow staff instructions (emphasis added).

The policy does allow for consideration on a case-by-case basis for immediate family of the offender with felony arrests within the last five (5) years to be determined by the facility head. As the appellant authority I am denying your visiting privileges effective immediately until the determination of your pending criminal charges. At that point I will reconsider your visiting application.

John Hardison, Warden
Idaho State Correctional Institution

JH/jk

Cc: DW Christensen; Sgt. McIntire

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Attachment

NO. _____ FILED _____
A.M. _____ P.M. 4:30

JAN 29 2009

J. DAVID NAVARRO, Clerk
By _____ INGA JOHNSON
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM LIGHTNER and
MARCIA LIGHTNER,

Plaintiffs,

vs.

JOHN HARDISON, BRENT REINKE,
and STEVE NELSON,

Defendants.

Case No. CVOC-0720193

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

This matter came before the Court on the Defendants' motion for summary judgment. The Court heard oral arguments on Monday, December 22, 2008. The Plaintiffs appeared pro se, Mrs. Lightner in person and Mr. Lightner telephonically from the Idaho Correctional Center. Mark Kubinski appeared for the Defendants. The Court took the matter under advisement at that time. For the reasons stated below, Defendants' motion is granted.

BACKGROUND

In 1989, Marcia Lightner received a withheld judgment for an unknown charge. *Aff. Marcia Lightner, Exhibit A.* While serving a prison sentence, William Lightner met Marcia, who was a

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1 contract vendor at the commissary at the Idaho State Correctional Institute (ISCI). *Civil Rights*
2 *Complaint*, ¶ 27. In 1997, the couple married and William Lightner remained incarcerated. *Civil*
3 *Rights Complaint*, ¶ 27. In 1998, William Lightner used the grievance process in regard to visitation
4 issues. *Aff. Jill Whittington*, ¶ 13. The Lightners objected to the prison policy that denied visitation
5 to the couple. *First Amended Civil Rights Complaint*, ¶ 29. Restricted visitation was granted and the
6 Lightners objected to the form of the visitation granted. *First Amended Civil Rights Complaint*, ¶
7 29. In 2000 or 2001, the Lightners received full visitation. *First Amended Civil Rights Complaint*, ¶
8 29. In 2005 William Lightner granted parole. *Aff. John Hardison*, ¶ 6; *Exhibit D*. While he was on
9 parole, the Lightners left the country and took up residence in Belize. *Aff. Marcia Lightner*, ¶ 6.
10

11 On April 10, 2007, Marcia Lightner was arrested for the felony offense of harboring a felon
12 in violation of Idaho Code § 18-205. *Aff. Marcia Lightner*, ¶ 5; *Aff. Mark Kubinski, Exhibit A*. The
13 following day she was released on bail. *Aff. Marcia Lightner*, ¶ 5. Early in the morning on April 12,
14 2008, Marcia Lightner went to the Idaho State Correctional Institute and was informed that her
15 visitation was suspended as a result of her arrest. *Aff. Marcia Lightner*, ¶ 10. Subsequently, Marcia
16 Lightner wrote to Warden Blades attempting to explain the circumstances of the event and pleading
17 for reinstatement of visitation. *Aff. Marcia Lightner, Exhibit A*. Warden Blades reinstated the
18 Lightners' visitation on the condition that she keep the facility informed of the status of her case.
19 *Aff. Marcia Lightner*, ¶ 16. Marcia Lightner contacted the staff in August 2007 with an update, but
20 failed to provide any other updates. *Aff. Marcia Lightner*, ¶ 18.
21

22 The Lightners have a history of violating facility policies. On November 29, 2006, William
23 Lightner accepted a visitation restriction when offered the choice of visitation restriction or a DOR
24 for violating the visitor contact rules at the beginning and conclusion of his visits with Marcia
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1 Lightner. *Aff. John Hardison, Exhibit G.* On December 28, 2006, William Lightner was issued a
2 DOR for inappropriate goodbye. *Id.* On July 22, 2007, other visitors to the Idaho State Correctional
3 Institute complained that Marcia Lightner was changing the order of the visitors log and was
4 dressed inappropriately for visiting, including sheer, revealing clothing and a lack of undergarments.
5 *Id.* On August 27, 2007, Marcia Lightner parked in an accessible space but failed to display her
6 disabled identification permit. *Id.* When reminded to be sure that her permit was displayed, Marcia
7 Lightner exhibited hostility to the officer. *Id.*

8
9 On October 1, 2007, Marcia Lightner was informed by telephone that visitation was
10 suspended because she was a security risk and that there was a possibility of reconsideration
11 pending the outcome of her case. *Aff. Marcia Lightner, ¶ 21.* Although requests for a personal
12 meeting were made, Director Brent Reinke did not meet with Marcia Lightner regarding the
13 visitation suspension. *Aff. Marcia Lightner, ¶ 23.* No internal grievances relating to visitation issues
14 were filed by William Lightner between January 2007 and January 2008. *Aff. Jill Whittington, ¶ 13.*

15 On March 31, 2008, Marcia Lightner pled guilty to obstructing justice and received a two
16 year probation sentence. *Aff. Mark Kubinski, Exhibit A.* The harboring a felon charge was dismissed
17 as part of the plea agreement. *Aff. Marcia Lightner, ¶ 5.* The Lightners have had visitation since
18 June 13, 2008. *Aff. John Hardison, Exhibit H.* To compensate for the period of separation, the
19 Lightners seek an award of \$120,000 and \$12,500.00 per missed visit—a total of nearly \$1.5
20 million. *First Amended Civil Rights Complaint, 11.*

22 SUMMARY JUDGMENT STANDARD

23 Summary judgment is appropriate if “the pleadings, depositions, and admissions on file,
24 together with the affidavits, if any, show that there is no genuine issue as to any material fact and
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1 that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). If the evidence
2 reveals that no disputed issues of material fact exist, then only a question of law remains. *First Sec.*
3 *Bank of Idaho, N.A. v. Murphy*, 131 Idaho 787, 790, 964 P.2d 654, 657 (1998). In a motion for
4 summary judgment, all disputed facts are construed liberally in favor of the non-moving party and
5 all reasonable inferences drawn from the record are to be drawn in favor of the non-moving party.
6 *See Williams v. Blakley*, 114 Idaho 323, 324, 757 P.2d 186, 187 (1988); *Blake v. Cruz*, 108 Idaho
7 253, 255, 698 P.2d 315, 317 (1985). Idaho Rule of Civil Procedure 56(e) provides that an adverse
8 party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits
9 specific facts showing there is a genuine issue for trial. *See Rhodehouse v. Stutts*, 125 Idaho 208,
10 211, 868 P.2d 1224, 1227 (1994). The affidavits either supporting or opposing the motion must set
11 forth facts that would be admissible in evidence and show that the affiant is competent to testify.
12 *Id.*, I.R.C.P. 56(e). To withstand a motion for summary judgment, the non-moving party’s case must
13 be anchored in something more than speculation; a mere scintilla of evidence is not enough to create
14 a genuine issue. *Zimmerman v. Volkswagon of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67, 69
15 (1996).
16

17 **WHETHER PLAINTIFF WILLIAM LIGHTNER’S CLAIMS ARE BARRED DUE TO HIS FAILURE TO**
18

19 **EXHAUST THE ISCI GRIEVANCE PROCESS**

20 It is well established that a prisoner may not bring an action with respect to conditions of
21 confinement without first exhausting available administrative remedies. Idaho Code § 19-4206; 42
22 U.S.C. § 1997e(a); *Drennon v. Idaho State Correctional Institution*, 145 Idaho 598, 602, 181 P.3d
23 524, 528 (2007). There is sufficient evidence in the record to indicate that ISCI has a grievance
24 procedure and that William Lightner was familiar with the prison grievance system, having used it
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1 in the past for similar issues. There is also sufficient evidence to ascertain that not only did Mr.
2 Lightner fail to exhaust the administrative remedy process, he failed to avail himself of this process
3 at all with regard to the October suspension of visitation.

4 Plaintiffs assert that this is not a condition of confinement case, "but only the termination of
5 his wife's visitation privileges" and has "a constitutional issue of material fact." Response and
6 Objection to State's Motion for Summary Judgment, ¶ 16. The Eighth Amendment, which prohibits
7 cruel and unusual punishments, imposes a duty on prison officials to provide humane conditions of
8 confinement and to take reasonable measures to guarantee the safety of the inmates. *Helling v.*
9 *McKinney*, 509 U.S. 25, 31-33 (1993). Conditions of confinement that are subject to exhaustion
10 have been defined broadly by federal courts as the effects of actions by government officials on the
11 lives of and discipline of persons confined in prisons. *Preiser v. Rodriguez*, 411 U.S. 475, 499
12 (1973); *Smith v. Zachary*, 255 F.3d 446, 449 (7th Cir.2001); *see also Lawrence v. Goord*, 304 F.3d
13 198, 200 (2d Cir.2002); 18 U.S.C. § 3626(g)(2). The determination of who may visit an inmate at
14 what time, subject to what restrictions, and for how long is an action by a government officials that
15 has an effect on the life of a person confined to prison. The Court finds that this is a condition of
16 confinement case to which the exhaustion requirement applies.
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19 The Plaintiffs cite cases where the federal exhaustion requirement was held not to apply, but
20 these cases are very different from the one at hand. One cited case dealt with cell temperatures that
21 would cause inmates to become hypothermic. *Mitchell v. Shomig*, 969 F. Supp. 487 (N.D. IL. 1997).
22 Another dealt with unhealthy air. *Bishop v. Lewis*, 155 F.3d 1094 (9th Cir. 1998). Requiring inmates
23 to follow a grievance procedure in a life threatening situation would be improper. The Lightners'
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1 situation was not life threatening. Plaintiff William Lightner failed to exhaust the IDOC grievance
2 process. Defendants' motion for summary judgment with regard to this issue is granted.

3 **WHETHER PLAINTIFFS HAVE FAILED TO STATE A CLAIM AGAINST DIRECTOR BRENT REINKE**

4 In order for a person acting under color of state law to be liable under Section 1983, there
5 must be a showing of personal participation in the alleged rights deprivation. *Jones v. Williams*, 297
6 F.3d 930, 934 (9th Cir. 2002) (citing *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (requiring
7 personal participation in the alleged constitutional violations); *May v. Enomoto*, 633 F.2d 164, 167
8 (9th Cir. 1980) (holding that section 1983 liability must be based on the personal involvement of the
9 defendant)). There is no respondeat superior liability under this section. *Id.* (citing *Monell v. Dep't*
10 *of Soc. Servs.*, 436 U.S. 658 (1978) (rejecting the concept of respondeat superior liability in the
11 section 1983 context and requiring individual liability for the constitutional violation). Further, in a
12 civil rights complaint, the circumstances constituting violation of a civil or constitutional right must
13 be stated in the complaint with particularity. I.R.C.P. 9(b). Plaintiffs do not identify any alleged
14 constitutional violation personally caused by Director Reinke. Plaintiffs also fail to make any
15 factual allegations of constitutional violations against Director Reinke in their amended complaint.
16 Defendants' motion for summary judgment with regard to this issue is granted.

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19 **WHETHER PLAINTIFFS HAVE FAILED TO STATE A CLAIM AGAINST DEFENDANT STEVE NELSON**

20 As stated above, in an inmate civil rights action, there must be a showing of personal
21 participation in the alleged rights deprivation and in any civil rights action the circumstances
22 constituting that violation must be stated with particularity. The record indicates that Mr. Nelson
23 was not employed at the facility at the time of the October visitation suspension. *Aff. John*
24 *Hardison*, ¶ 12. As Mr. Nelson was not at the facility at the time of the visitation suspension, his
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1 personal participation in it would not be possible. Defendants' motion for summary judgment with
2 regard to this issue is granted.

3 WHETHER THE DENIAL OF MARCIA LIGHTNER'S VISITATION VIOLATE HER CONSTITUTIONAL
4 RIGHTS

5 The United States Constitution protects "certain kinds of highly personal relationships."
6 *Roberts v. United States Jaycees*, 468 U.S. 609, 618, 619–20 (1984). However, the United States
7 Supreme Court has limited the protection of relationships where incarceration is a factor.

8
9 The very object of imprisonment is confinement. Many of the liberties and
10 privileges enjoyed by other citizens must be surrendered by the prisoner. An inmate
11 does not retain rights inconsistent with proper incarceration. And, as our cases have
12 established, freedom of association is among the rights least compatible with
13 incarceration. Some curtailment of that freedom must be expected in the prison
14 context.

15 *Overton v. Bazzetta*, 539 U.S. 126, 131 (2003) (citations omitted).

16 Protected liberty interests "may arise from two sources—the Due Process Clause itself and
17 the laws of the States." *Ky. Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989) (quoting
18 *Hewitt v. Helms*, 459 U.S. 460 (1983)). "The Due Process Clause of the federal constitution does
19 not, of its own force, create a liberty interest . . . , for it is well settled that an inmate does not have a
20 liberty interest in the denial of contact visits by a spouse, relatives, children, and friends." *Block v.*
21 *Rutherford*, 468 U.S. 576 (1984). The denial of a prisoner's access to a particular visitor "is well
22 within the terms of confinement ordinarily contemplated by a prison sentence." *Thompson*, 490 U.S.
23 at 461 (quoting *Hewitt*, 459 U.S. at 468).

24 However, state statutes or regulations can create a due process liberty interest where none
25 otherwise would have existed. *Thompson*, 490 U.S. at 461. For a state law to create a liberty
26 interest, it must contain "explicitly mandatory language." *Thompson* 490 U.S. at 463 (quoting

1 *Hewitt*, 459 U.S. at 472). In *Sandin*, the United States Supreme Court held that liberty interests are
2 not created by negative implications from mandatory language in prison regulations. *Sandin v.*
3 *Conner*, 515 U.S. 472, 484 (1995). Rather, to create a liberty interest, the action taken must be an
4 atypical and significant deprivation from the normal incidents of prison life. *Id.* Where the language
5 of state statutes and regulations create a right, that right is entitled to due process protection. *See*
6 *Mendoza v. Blodgett*, 960 F.2d 1425 (9th Cir. 1992) (holding that where a prison regulation
7 contained explicit mandatory language that a visiting privilege could only be suspended after a
8 finding of guilt, the termination of the privilege violated due process); *Taylor v. Armontrout*, 894
9 F.2d 961 (8th Cir. 1989) (holding regulation that stated peoples whose names appear on the list
10 “shall” be allowed to visit created a right to visitation entitled to due process protection).
11

12 Idaho Board of Correction Rule 604 states in pertinent part:

13 Nothing in Section 604 establishes a right to visit any inmate. Nothing in Section 604
14 should be interpreted as an expectation that visitation will be approved between any
15 person and any inmate if the Department has suspended, terminated, or revoked a
16 visitor or inmate’s visiting privileges.

17 ...

18 Inmate visitation is allowed at the discretion of the facility head or designee. Each
19 division may develop standard operating procedures and field memoranda to govern
20 inmate visiting.

21 ...

22 A person who has pending criminal charges or who is the subject of a criminal
23 investigation will not be permitted to visit an inmate, except upon written approval of
24 the facility head or designee.

25 IDAPA 06.01.01.604.01, .02, .05(j).

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1 Additionally, Rule 604 makes clear that visits may be suspended, restricted, or terminated at any
2 time, for any period of time at the discretion of the facility head in accordance with standard
3 operating procedures. IDAPA 06.01.01.604.06.

4 Plaintiffs challenge the constitutionality of Rule 604. The United States Supreme Court
5 established a four factor test to determine the validity of a prison regulation affecting a
6 constitutional right. *Turner v. Safley*, 482 U.S. 78 (1987). In 2003, the United States Supreme Court
7 applied that test to a challenge to the constitutionality of a prison visitation regulation. *Overton v.*
8 *Bazzetta*, 539 U.S. 126, 133 (2003) The *Turner* factors are: 1) whether the regulation has a valid,
9 rational connection to a legitimate government interest; 2) whether alternative means are open to
10 inmates to exercise the asserted right; 3) what impact an accommodation of the right would have on
11 guards and inmates and prison resources; and 4) whether there are ready alternatives to the
12 regulation. *Id.* at 132. The burden is on the challenger to disprove the validity of the regulation, not
13 on the prison to prove the validity of the regulation. *Id.* "The status of a person as a prisoner or a
14 non-prisoner does not determine whether the *Turner* test applies to prison regulations that may
15 affect both prisoners and non-prisoners." *Rice v. Kempker*, 374 F.3d 675, 681 (8th Cir. 2004);
16 *Thornburgh v. Abbott*, 490 U.S. 401, 411 n. 9 (rejecting "any attempt to forge separate standards for
17 cases implicating the rights of outsiders").

18 Preventing an inmate from visiting with someone accused of harboring a fugitive serves the
19 legitimate penological purpose of protecting the security of the institution. Preventing visits which
20 habitually create a disturbance serves the legitimate penological purpose of minimizing disruption
21 in the visiting area. The Court finds that Warden Hardison was acting with the penological purpose
22 to preserve the safe, secure, and orderly operation of the facility. Alternative means of
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1 communication are available to the Lightners, they have regular telephone conversations and access
2 to mail services. These alternative methods of communication were found sufficient by the United
3 States Supreme Court in *Overton*. Based on the evidence provided, the Lightners' visits are
4 challenging for the guards, a drain on prison resources, and unfair to other inmates in that more time
5 must be spent with the Lightners to the detriment of other visitors. As to the impact an
6 accommodation for the Lightners would have on guards and inmates and prison resources, even
7 when viewed in the light most favorable to the Plaintiffs, the evidence shows that an attempt to
8 accommodate the Lightners could have been unreasonably time consuming and burdensome on the
9 facility and the other inmates. In explanation of the fourth factor, the United States Supreme Court
10 stated, "*Turner* does not impose a least restrictive alternative test, but asks instead whether the
11 prisoner has pointed to some obvious regulatory alternative that fully accommodates the asserted
12 right while not imposing more than a de minimus cost to the valid penological goal." *Overton*, 539
13 U.S. at 136. Plaintiffs have provided no such alternative nor does one seem to exist within the
14 limited resources of the IDOC.
15

16 The Plaintiffs have failed to meet their burden in showing the regulation to be
17 unconstitutional. The Court finds that Marcia Lightner's constitutional rights have not been violated
18 by the suspension of visitation. Defendants' motion for summary judgment with regard to this issue
19 is granted.
20

21 **WHETHER DEFENDANT HARDISON IS ENTITLED TO QUALIFIED IMMUNITY**

22 The three-part inquiry to determine if a public official asserting qualified immunity is
23 entitled to the defense consists of: 1.) Was there a clearly established law? 2.) Did the conduct of
24 the party asserting qualified immunity violate a clearly established right of the party claiming the
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1 violation? and 3.) Was the conduct of the party asserting qualified immunity reasonable? *Farnworth*
2 *v. Femling*, 125 Idaho 283, 286, 869 P.2d 1378, 1381 (1994). If a reasonable official could have
3 believed that his actions were lawful, summary judgment on the basis of qualified immunity is
4 appropriate. *McKinsey v. Vernon*, 130 Idaho 354, 357, 941 P.2d 327, 329 (1997) (quoting *Hemphill*
5 *v. Kincheloe*, 987 F.2d 589, 593 (9th Cir. 1993)). Only where there is a genuine issue of fact that
6 would preclude a grant of summary judgment, should the court let the case to proceed to trial. *Id.*

7
8 *Overton* provides established law that visitation regulations which are rationally related to a
9 legitimate penological interest are constitutional. There is no Constitutional right to unrestricted
10 visitation, therefore Defendant Hardison did not violate that right by imposing an indefinite
11 suspension of the Lightners' visitation. Even when viewed in the light most favorable to Plaintiffs,
12 the circumstances surrounding the Lightners' visits are a security risk and costly to the facility.
13 William Lightner would be a flight risk if he were to have an opportunity to leave the facility.
14 Marcia Lightner was fooled by a fugitive and assisted her in her flight. The warden's actions were
15 objectively reasonable to ensure the security of the facility and minimize cost to the facility.
16 Defendant Hardison is entitled to qualified immunity. Defendants' motion for summary judgment
17 with regard to this issue is granted.

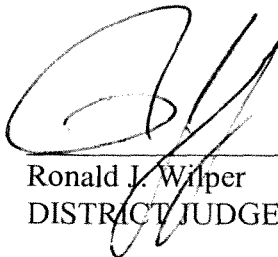
18
19 **WHETHER MARCIA LIGHTNER'S CLAIM FOR LOSS OF CONSORTIUM FAILS AS A MATTER OF LAW**

20 A claim for loss of consortium "is a wholly derivative cause of action contingent upon a
21 third party's tortious injury to a spouse." *Runcorn v. Shearer Lumber Products, Inc.*, 107 Idaho 389,
22 394, 690 P.2d 324, 329 (1984). "[F]ederal courts have almost unanimously denied derivative loss of
23 consortium claims based on the violation of the spouse's civil rights." *Jeremiah v. Yanke Machine*
24 *Shop, Inc.*, 131 Idaho 242, 249, 953 P.2d 992, 999 (1998). In *Jeremiah*, the Idaho Supreme Court
25

1 would not add a common law remedy which was not recognized in the statute, Title VII or the Idaho
2 Human Rights Act. This case is similar. Mr. Lightner asserts federal and state law claims that his
3 civil rights were infringed but neither Section 1983 nor the Habeas Corpus and Institutional
4 Litigation Procedures Act, Idaho Code §§ 19-4201 to 19-4226, recognizes a loss of consortium
5 cause of action. Even if Mr. Lightner's claim were not barred by his failure to exhaust
6 administrative remedies and if that claim were to have succeeded, a loss of consortium claim based
7 upon alleged violation of civil rights fails as a matter of law. Defendants' motion for summary
8 judgment with regard to this issue is granted.
9

10
11 IT IS SO ORDERED.

12 Dated this 29th day of January, 2009.
13

14 
15 Ronald J. Wilper
16 DISTRICT JUDGE
17
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CERTIFICATE OF MAILING

I, HEREBY CERTIFY that on the 20 day of January, 2009, I caused a true and correct copy of the foregoing ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT to be served by the method indicated below, and addressed to the following:

William Lightner
ICC Unit-C PO Box 70010
Boise, ID 83707

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Marcia Lightner
300 E. 41st Street
Garden City, ID 83714

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Mark Kubinski
1299 N. Orchard, Ste. 110
Boise, ID 83706

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

By INGA JOHNSON
Deputy Clerk

NO. _____
FILED _____
AM. _____ 12:29

MAR 11 2009

J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
DEPUTY

WILLIAM LIGHTNER
41438 ICC UNIT-C
PO BOX 70010
BOISE, ID 83707

MARCIA LIGHTNER
300 E 41ST
GARDEN CITY, ID 83714

APPELLANTS, PRO, SE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM LIGHTNER)
MARCIA LIGHTNER)
Appellant's Pro, Se)
IDOC DIRECTOR, BRENT RENKE et., al.)
JOHN HARDISON,)
STEVE NELSON,)
Respondent's)
_____)

Case No. CV-OC-07-20193

NOTICE OF APPEAL

TO: THE ABOVE RESPONDENTS, ADA COUNTY 4TH DISTRICT COURT et, al
ADA COUNTY PROSECUTING OFFICE et., al, AND ADA COUNTY PUBLIC DEFENDERS
OFFICE et., al. AND THE PARTIES ATTORNEYS, MARK KUBINSKI PROSECUTING
ATTORNEY'S AND THE CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT

1. The above named Appellant William Lightner, and Marcia Lightner appeals against the
above named respondents to the Idaho Supreme Court from Memorandum opinion and order
dismissing the Appellants Civil Rights Complaint. (See attached Memorandum Opinion and

Order) entered in the above-entitled action (proceeding) on the 22 December 2008, Honorable Ronald J. Wilper.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or orders described in paragraph 1 above are appealable orders under and pursuant to Rule (11(a),

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

A. Marcia Lightners, loss of consortium due process constitutional rights were violated do to no hearing afforded her prior to visitation suspension.

B. William Lightners, loss of consortium when wife's visitation was suspended without due process hearing, the lack of a grievance process in place to grieve the warden

C. The Lack of a grievance process being in place to grieve the listed final appellate authority

D. Lack of Due Process for a hearing, Double Jeopardy, and Retaliation.

4. (a) Is a reporter's transcript requested? YES

(b) The appellant requests the preparation of the following portions of the reporter's transcript:

1. Transcripts from hearing on 11-14-2008
2. Transcripts from hearing on 12-22-2008.

The entire reporter's standard transcript as defined in Rule 25(a), I.A.R.

Appellant has the Transcripts;

☐ The entire reporter's transcript supplemented by the following:

- ☐ Voir Dire examination of jury
- ☐ Closing arguments of counsel
- ☐ The following reporter's partial transcript:
- ☐ The Testimony of witnesses
- ☐ Conferences on requested instructions
- ☐ Instructions verbally given by court

5. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

Appellant requests:


1. 1-14-2008 Civil Rights Complaint
2. 6-16-08 Amended Civil Rights Complaint
3. 11-21-2008 Memorandum for Summary Judgment
4. 11-21-2008 Affidavit of Jill Whittington
5. 11-21-2008 Affidavit of Mark A. Kubibski
6. 11-21-2008 Affidavit of John Hardison
7. 12-9-2008 Response and objection to States Motion for Summary Judgment with Affidavits in support.
(2) Affidavits. (William and Marcia Lightners Affidavits)
8. 12-15-2008 Reply Memorandum in Support of Defendants Motion for Summary Judgment.

6. I certify:

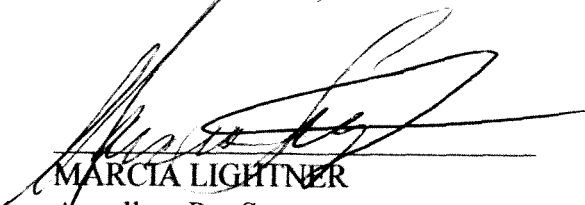
- (a) That a copy of this notice of appeal has been served on the reporter.

- (b)(1) ☐ That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of reporter's transcript.
- (2) ☒ That the appellant is exempt from paying the estimated transcript fee because he is indigent and has already been granted indigence;
- (c)(1) ☐ That the estimated fee for preparation of the clerk or agency's record has been paid.
- (2) ☐ That the appellant is exempt from paying the estimated fee for the preparation of the record because the affiant is indigent.
- (d)(1) ☐ That the appellate filing fee has been paid per the court's order of partial payment;
- 2) ☒ That appellate is exempt from paying the appellate filing fee because he is indigent as shown by the court's order of partial payment of fees;
- (e) That service has been made upon all parties required to be served pursuant to Rule 20 and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code.

Dated this 10 day of March, 2009


WILLIAM LIGHTNER
APPELLANT PRO, SE

Dated this 10 day of March, 2009

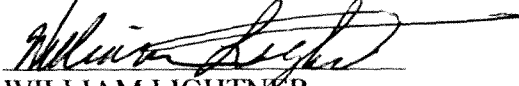

MARCIA LIGHTNER
Appellant Pro, Se

STATE OF IDAHO)
)ss.
County of Ada (

William Lightner, being sworn, deposes and says:

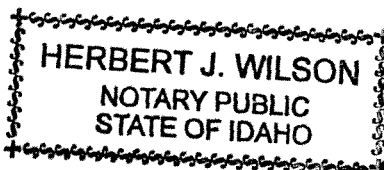
That he is the appellant in the above-entitled NOTICE OF APPEAL and that all statements
in this Notice Of Appeal are true and correct to the best of his knowledge and belief.

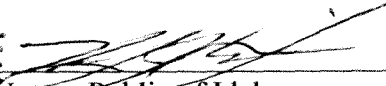
3-10-2009


WILLIAM LIGHTNER
Appellant Pro, Se

SUBSCRIBED AND SWORN to before me this 10th day of MARCH, 2009

SEAL:




Notary Public of Idaho

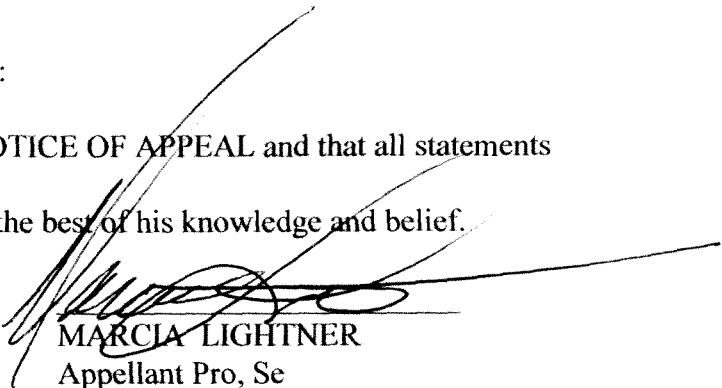
Commission expires: 5-16-2010

STATE OF IDAHO)
)ss.
County of Ada (

Marcia Lightner, being sworn, deposes and says:

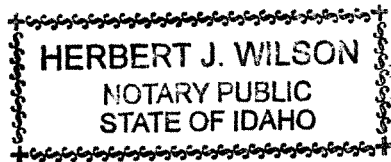
That he is the appellant in the above-entitled NOTICE OF APPEAL and that all statements
in this Notice Of Appeal are true and correct to the best of his knowledge and belief.


3-10-2009


MARCIA LIGHTNER
Appellant Pro, Se

SUBSCRIBED AND SWORN to before me this 10th day of MARCH, 2009

SEAL:




Notary Public of Idaho

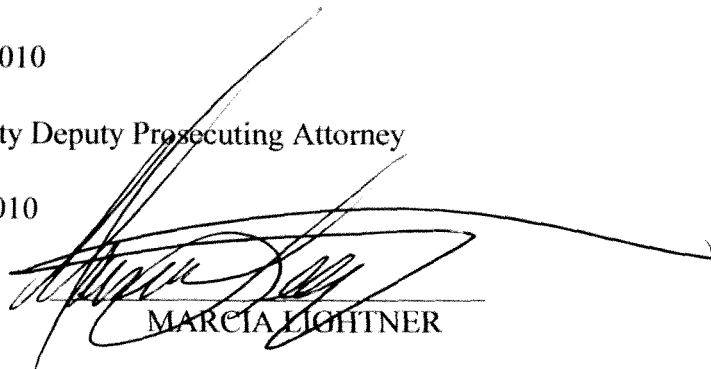
Commission expires: 5-16-2010

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on the 11 day of March, 2009, I mailed a true and correct copy of
the NOTICE OF APPEAL via US mail system to:

OFFICE OF THE ATTORNEY GENERAL
APPELLATE UNIT
PO BOX, 83720,
BOISE, IDAHO 83720-0010

MARK KUBINSKI County Deputy Prosecuting Attorney
200 W FRONT STREET,
BOISE, IDAHO 83702-0010



MARCIA LIGHTNER

NO. _____ FILED _____ 4:30
A.M. _____ P.M. _____

JAN 29 2009

J. DAVID NAVARRO, Clerk
By _____ DEPUTY CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM LIGHTNER and
MARCIA LIGHTNER,

Plaintiffs,

vs.

JOHN HARDISON, BRENT REINKE,
and STEVE NELSON,

Defendants.

Case No. CVOC-0720193

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

This matter came before the Court on the Defendants' motion for summary judgment. The Court heard oral arguments on Monday, December 22, 2008. The Plaintiffs appeared pro se, Mrs. Lightner in person and Mr. Lightner telephonically from the Idaho Correctional Center. Mark Kubinski appeared for the Defendants. The Court took the matter under advisement at that time. For the reasons stated below, Defendants' motion is granted.

BACKGROUND

In 1989, Marcia Lightner received a withheld judgment for an unknown charge. *Aff. Marcia Lightner, Exhibit A.* While serving a prison sentence, William Lightner met Marcia, who was a

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1 contract vendor at the commissary at the Idaho State Correctional Institute (ISCI). *Civil Rights*
2 *Complaint*, ¶ 27. In 1997, the couple married and William Lightner remained incarcerated. *Civil*
3 *Rights Complaint*, ¶ 27. In 1998, William Lightner used the grievance process in regard to visitation
4 issues. *Aff. Jill Whittington*, ¶ 13. The Lightners objected to the prison policy that denied visitation
5 to the couple. *First Amended Civil Rights Complaint*, ¶ 29. Restricted visitation was granted and the
6 Lightners objected to the form of the visitation granted. *First Amended Civil Rights Complaint*, ¶
7 29. In 2000 or 2001, the Lightners received full visitation. *First Amended Civil Rights Complaint*, ¶
8 29. In 2005 William Lightner granted parole. *Aff. John Hardison*, ¶ 6; *Exhibit D*. While he was on
9 parole, the Lightners left the country and took up residence in Belize. *Aff. Marcia Lightner*, ¶ 6.
10

11 On April 10, 2007, Marcia Lightner was arrested for the felony offense of harboring a felon
12 in violation of Idaho Code § 18-205. *Aff. Marcia Lightner*, ¶ 5; *Aff. Mark Kubinski, Exhibit A*. The
13 following day she was released on bail. *Aff. Marcia Lightner*, ¶ 5. Early in the morning on April 12,
14 2008, Marcia Lightner went to the Idaho State Correctional Institute and was informed that her
15 visitation was suspended as a result of her arrest. *Aff. Marcia Lightner*, ¶ 10. Subsequently, Marcia
16 Lightner wrote to Warden Blades attempting to explain the circumstances of the event and pleading
17 for reinstatement of visitation. *Aff. Marcia Lightner, Exhibit A*. Warden Blades reinstated the
18 Lightners' visitation on the condition that she keep the facility informed of the status of her case.
19 *Aff. Marcia Lightner*, ¶ 16. Marcia Lightner contacted the staff in August 2007 with an update, but
20 failed to provide any other updates. *Aff. Marcia Lightner*, ¶ 18.
21

22 The Lightners have a history of violating facility policies. On November 29, 2006, William
23 Lightner accepted a visitation restriction when offered the choice of visitation restriction or a DOR
24 for violating the visitor contact rules at the beginning and conclusion of his visits with Marcia
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1 Lightner. *Aff. John Hardison, Exhibit G.* On December 28, 2006, William Lightner was issued a
2 DOR for inappropriate goodbye. *Id.* On July 22, 2007, other visitors to the Idaho State Correctional
3 Institute complained that Marcia Lightner was changing the order of the visitors log and was
4 dressed inappropriately for visiting, including sheer, revealing clothing and a lack of undergarments.
5 *Id.* On August 27, 2007, Marcia Lightner parked in an accessible space but failed to display her
6 disabled identification permit. *Id.* When reminded to be sure that her permit was displayed, Marcia
7 Lightner exhibited hostility to the officer. *Id.*

8
9 On October 1, 2007, Marcia Lightner was informed by telephone that visitation was
10 suspended because she was a security risk and that there was a possibility of reconsideration
11 pending the outcome of her case. *Aff. Marcia Lightner, ¶ 21.* Although requests for a personal
12 meeting were made, Director Brent Reinke did not meet with Marcia Lightner regarding the
13 visitation suspension. *Aff. Marcia Lightner, ¶ 23.* No internal grievances relating to visitation issues
14 were filed by William Lightner between January 2007 and January 2008. *Aff. Jill Whittington, ¶ 13.*

15 On March 31, 2008, Marcia Lightner pled guilty to obstructing justice and received a two
16 year probation sentence. *Aff. Mark Kubinski, Exhibit A.* The harboring a felon charge was dismissed
17 as part of the plea agreement. *Aff. Marcia Lightner, ¶ 5.* The Lightners have had visitation since
18 June 13, 2008. *Aff. John Hardison, Exhibit H.* To compensate for the period of separation, the
19 Lightners seek an award of \$120,000 and \$12,500.00 per missed visit—a total of nearly \$1.5
20 million. *First Amended Civil Rights Complaint, 11.*

22 SUMMARY JUDGMENT STANDARD

23 Summary judgment is appropriate if “the pleadings, depositions, and admissions on file,
24 together with the affidavits, if any, show that there is no genuine issue as to any material fact and
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1 that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). If the evidence
2 reveals that no disputed issues of material fact exist, then only a question of law remains. *First Sec.*
3 *Bank of Idaho, N.A. v. Murphy*, 131 Idaho 787, 790, 964 P.2d 654, 657 (1998). In a motion for
4 summary judgment, all disputed facts are construed liberally in favor of the non-moving party and
5 all reasonable inferences drawn from the record are to be drawn in favor of the non-moving party.
6 *See Williams v. Blakley*, 114 Idaho 323, 324, 757 P.2d 186, 187 (1988); *Blake v. Cruz*, 108 Idaho
7 253, 255, 698 P.2d 315, 317 (1985). Idaho Rule of Civil Procedure 56(e) provides that an adverse
8 party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits
9 specific facts showing there is a genuine issue for trial. *See Rhodehouse v. Stutts*, 125 Idaho 208,
10 211, 868 P.2d 1224, 1227 (1994). The affidavits either supporting or opposing the motion must set
11 forth facts that would be admissible in evidence and show that the affiant is competent to testify.
12 *Id.*, I.R.C.P. 56(e). To withstand a motion for summary judgment, the non-moving party’s case must
13 be anchored in something more than speculation; a mere scintilla of evidence is not enough to create
14 a genuine issue. *Zimmerman v. Volkswagon of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67, 69
15 (1996).

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18 **WHETHER PLAINTIFF WILLIAM LIGHTNER’S CLAIMS ARE BARRED DUE TO HIS FAILURE TO**
19 **EXHAUST THE ISCI GRIEVANCE PROCESS**

20 It is well established that a prisoner may not bring an action with respect to conditions of
21 confinement without first exhausting available administrative remedies. Idaho Code § 19-4206; 42
22 U.S.C. § 1997e(a); *Drennon v. Idaho State Correctional Institution*, 145 Idaho 598, 602, 181 P.3d
23 524, 528 (2007). There is sufficient evidence in the record to indicate that ISCI has a grievance
24 procedure and that William Lightner was familiar with the prison grievance system, having used it
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1 in the past for similar issues. There is also sufficient evidence to ascertain that not only did Mr.
2 Lightner fail to exhaust the administrative remedy process, he failed to avail himself of this process
3 at all with regard to the October suspension of visitation.

4 Plaintiffs assert that this is not a condition of confinement case, "but only the termination of
5 his wife's visitation privileges" and has "a constitutional issue of material fact." Response and
6 Objection to State's Motion for Summary Judgment, ¶ 16. The Eighth Amendment, which prohibits
7 cruel and unusual punishments, imposes a duty on prison officials to provide humane conditions of
8 confinement and to take reasonable measures to guarantee the safety of the inmates. *Helling v.*
9 *McKinney*, 509 U.S. 25, 31-33 (1993). Conditions of confinement that are subject to exhaustion
10 have been defined broadly by federal courts as the effects of actions by government officials on the
11 lives of and discipline of persons confined in prisons. *Preiser v. Rodriguez*, 411 U.S. 475, 499
12 (1973); *Smith v. Zachary*, 255 F.3d 446, 449 (7th Cir.2001); see also *Lawrence v. Goord*, 304 F.3d
13 198, 200 (2d Cir.2002); 18 U.S.C. § 3626(g)(2). The determination of who may visit an inmate at
14 what time, subject to what restrictions, and for how long is an action by a government officials that
15 has an effect on the life of a person confined to prison. The Court finds that this is a condition of
16 confinement case to which the exhaustion requirement applies.
17

18
19 The Plaintiffs cite cases where the federal exhaustion requirement was held not to apply, but
20 these cases are very different from the one at hand. One cited case dealt with cell temperatures that
21 would cause inmates to become hypothermic. *Mitchell v. Shomig*, 969 F. Supp. 487 (N.D. IL. 1997).
22 Another dealt with unhealthy air. *Bishop v. Lewis*, 155 F.3d 1094 (9th Cir. 1998). Requiring inmates
23 to follow a grievance procedure in a life threatening situation would be improper. The Lightners'
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1 situation was not life threatening. Plaintiff William Lightner failed to exhaust the IDOC grievance
2 process. Defendants' motion for summary judgment with regard to this issue is granted.

3 **WHETHER PLAINTIFFS HAVE FAILED TO STATE A CLAIM AGAINST DIRECTOR BRENT REINKE**

4 In order for a person acting under color of state law to be liable under Section 1983, there
5 must be a showing of personal participation in the alleged rights deprivation. *Jones v. Williams*, 297
6 F.3d 930, 934 (9th Cir. 2002) (citing *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (requiring
7 personal participation in the alleged constitutional violations); *May v. Enomoto*, 633 F.2d 164, 167
8 (9th Cir. 1980) (holding that section 1983 liability must be based on the personal involvement of the
9 defendant)). There is no respondeat superior liability under this section. *Id.* (citing *Monell v. Dep't*
10 *of Soc. Servs.*, 436 U.S. 658 (1978) (rejecting the concept of respondeat superior liability in the
11 section 1983 context and requiring individual liability for the constitutional violation). Further, in a
12 civil rights complaint, the circumstances constituting violation of a civil or constitutional right must
13 be stated in the complaint with particularity. I.R.C.P. 9(b). Plaintiffs do not identify any alleged
14 constitutional violation personally caused by Director Reinke. Plaintiffs also fail to make any
15 factual allegations of constitutional violations against Director Reinke in their amended complaint.
16 Defendants' motion for summary judgment with regard to this issue is granted.
17

18
19 **WHETHER PLAINTIFFS HAVE FAILED TO STATE A CLAIM AGAINST DEFENDANT STEVE NELSON**

20 As stated above, in an inmate civil rights action, there must be a showing of personal
21 participation in the alleged rights deprivation and in any civil rights action the circumstances
22 constituting that violation must be stated with particularity. The record indicates that Mr. Nelson
23 was not employed at the facility at the time of the October visitation suspension. *Aff. John*
24 *Hardison*, ¶ 12. As Mr. Nelson was not at the facility at the time of the visitation suspension, his
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1 personal participation in it would not be possible. Defendants' motion for summary judgment with
2 regard to this issue is granted.

3 WHETHER THE DENIAL OF MARCIA LIGHTNER'S VISITATION VIOLATE HER CONSTITUTIONAL
4 RIGHTS

5 The United States Constitution protects "certain kinds of highly personal relationships."
6 *Roberts v. United States Jaycees*, 468 U.S. 609, 618, 619–20 (1984). However, the United States
7 Supreme Court has limited the protection of relationships where incarceration is a factor.

8 The very object of imprisonment is confinement. Many of the liberties and
9 privileges enjoyed by other citizens must be surrendered by the prisoner. An inmate
10 does not retain rights inconsistent with proper incarceration. And, as our cases have
11 established, freedom of association is among the rights least compatible with
12 incarceration. Some curtailment of that freedom must be expected in the prison
13 context.

14 *Overton v. Bazzetta*, 539 U.S. 126, 131 (2003) (citations omitted).

15 Protected liberty interests "may arise from two sources—the Due Process Clause itself and
16 the laws of the States." *Ky. Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989) (quoting
17 *Hewitt v. Helms*, 459 U.S. 460 (1983)). "The Due Process Clause of the federal constitution does
18 not, of its own force, create a liberty interest . . . , for it is well settled that an inmate does not have a
19 liberty interest in the denial of contact visits by a spouse, relatives, children, and friends." *Block v.*
20 *Rutherford*, 468 U.S. 576 (1984). The denial of a prisoner's access to a particular visitor "is well
21 within the terms of confinement ordinarily contemplated by a prison sentence." *Thompson*, 490 U.S.
22 at 461 (quoting *Hewitt*, 459 U.S. at 468).

23 However, state statutes or regulations can create a due process liberty interest where none
24 otherwise would have existed. *Thompson*, 490 U.S. at 461. For a state law to create a liberty
25 interest, it must contain "explicitly mandatory language." *Thompson* 490 U.S. at 463 (quoting

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1 *Hewitt*, 459 U.S. at 472). In *Sandin*, the United States Supreme Court held that liberty interests are
2 not created by negative implications from mandatory language in prison regulations. *Sandin v.*
3 *Conner*, 515 U.S. 472, 484 (1995). Rather, to create a liberty interest, the action taken must be an
4 atypical and significant deprivation from the normal incidents of prison life. *Id.* Where the language
5 of state statutes and regulations create a right, that right is entitled to due process protection. *See*
6 *Mendoza v. Blodgett*, 960 F.2d 1425 (9th Cir. 1992) (holding that where a prison regulation
7 contained explicit mandatory language that a visiting privilege could only be suspended after a
8 finding of guilt, the termination of the privilege violated due process); *Taylor v. Armontrout*, 894
9 F.2d 961 (8th Cir. 1989) (holding regulation that stated peoples whose names appear on the list
10 “shall” be allowed to visit created a right to visitation entitled to due process protection).
11

12 Idaho Board of Correction Rule 604 states in pertinent part:

13 Nothing in Section 604 establishes a right to visit any inmate. Nothing in Section 604
14 should be interpreted as an expectation that visitation will be approved between any
15 person and any inmate if the Department has suspended, terminated, or revoked a
16 visitor or inmate’s visiting privileges.

17 ...

18 Inmate visitation is allowed at the discretion of the facility head or designee. Each
19 division may develop standard operating procedures and field memoranda to govern
20 inmate visiting.

21 ...

22 A person who has pending criminal charges or who is the subject of a criminal
23 investigation will not be permitted to visit an inmate, except upon written approval of
24 the facility head or designee.

25 IDAPA 06.01.01.604.01, .02, .05(j).

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1 Additionally, Rule 604 makes clear that visits may be suspended, restricted, or terminated at any
2 time, for any period of time at the discretion of the facility head in accordance with standard
3 operating procedures. IDAPA 06.01.01.604.06.

4 Plaintiffs challenge the constitutionality of Rule 604. The United States Supreme Court
5 established a four factor test to determine the validity of a prison regulation affecting a
6 constitutional right. *Turner v. Safley*, 482 U.S. 78 (1987). In 2003, the United States Supreme Court
7 applied that test to a challenge to the constitutionality of a prison visitation regulation. *Overton v.*
8 *Bazzetta*, 539 U.S. 126, 133 (2003) The *Turner* factors are: 1) whether the regulation has a valid,
9 rational connection to a legitimate government interest; 2) whether alternative means are open to
10 inmates to exercise the asserted right; 3) what impact an accommodation of the right would have on
11 guards and inmates and prison resources; and 4) whether there are ready alternatives to the
12 regulation. *Id.* at 132. The burden is on the challenger to disprove the validity of the regulation, not
13 on the prison to prove the validity of the regulation. *Id.* "The status of a person as a prisoner or a
14 non-prisoner does not determine whether the *Turner* test applies to prison regulations that may
15 affect both prisoners and non-prisoners." *Rice v. Kempker*, 374 F.3d 675, 681 (8th Cir. 2004);
16 *Thornburgh v. Abbott*, 490 U.S. 401, 411 n. 9 (rejecting "any attempt to forge separate standards for
17 cases implicating the rights of outsiders").
18
19

20 Preventing an inmate from visiting with someone accused of harboring a fugitive serves the
21 legitimate penological purpose of protecting the security of the institution. Preventing visits which
22 habitually create a disturbance serves the legitimate penological purpose of minimizing disruption
23 in the visiting area. The Court finds that Warden Hardison was acting with the penological purpose
24 to preserve the safe, secure, and orderly operation of the facility. Alternative means of
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1 communication are available to the Lightners, they have regular telephone conversations and access
2 to mail services. These alternative methods of communication were found sufficient by the United
3 States Supreme Court in *Overton*. Based on the evidence provided, the Lightners' visits are
4 challenging for the guards, a drain on prison resources, and unfair to other inmates in that more time
5 must be spent with the Lightners to the detriment of other visitors. As to the impact an
6 accommodation for the Lightners would have on guards and inmates and prison resources, even
7 when viewed in the light most favorable to the Plaintiffs, the evidence shows that an attempt to
8 accommodate the Lightners could have been unreasonably time consuming and burdensome on the
9 facility and the other inmates. In explanation of the fourth factor, the United States Supreme Court
10 stated, "*Turner* does not impose a least restrictive alternative test, but asks instead whether the
11 prisoner has pointed to some obvious regulatory alternative that fully accommodates the asserted
12 right while not imposing more than a de minimus cost to the valid penological goal." *Overton*, 539
13 U.S. at 136. Plaintiffs have provided no such alternative nor does one seem to exist within the
14 limited resources of the IDOC.
15

16 The Plaintiffs have failed to meet their burden in showing the regulation to be
17 unconstitutional. The Court finds that Marcia Lightner's constitutional rights have not been violated
18 by the suspension of visitation. Defendants' motion for summary judgment with regard to this issue
19 is granted.
20

21 **WHETHER DEFENDANT HARDISON IS ENTITLED TO QUALIFIED IMMUNITY**

22 The three-part inquiry to determine if a public official asserting qualified immunity is
23 entitled to the defense consists of: 1.) Was there a clearly established law? 2.) Did the conduct of
24 the party asserting qualified immunity violate a clearly established right of the party claiming the
25

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violation? and 3.) Was the conduct of the party asserting qualified immunity reasonable? *Farnworth v. Femling*, 125 Idaho 283, 286, 869 P.2d 1378, 1381 (1994). If a reasonable official could have believed that his actions were lawful, summary judgment on the basis of qualified immunity is appropriate. *McKinsey v. Vernon*, 130 Idaho 354, 357, 941 P.2d 327, 329 (1997) (quoting *Hemphill v. Kincheloe*, 987 F.2d 589, 593 (9th Cir. 1993)). Only where there is a genuine issue of fact that would preclude a grant of summary judgment, should the court let the case to proceed to trial. *Id.*

Overton provides established law that visitation regulations which are rationally related to a legitimate penological interest are constitutional. There is no Constitutional right to unrestricted visitation, therefore Defendant Hardison did not violate that right by imposing an indefinite suspension of the Lightners' visitation. Even when viewed in the light most favorable to Plaintiffs, the circumstances surrounding the Lightners' visits are a security risk and costly to the facility. William Lightner would be a flight risk if he were to have an opportunity to leave the facility. Marcia Lightner was fooled by a fugitive and assisted her in her flight. The warden's actions were objectively reasonable to ensure the security of the facility and minimize cost to the facility. Defendant Hardison is entitled to qualified immunity. Defendants' motion for summary judgment with regard to this issue is granted.

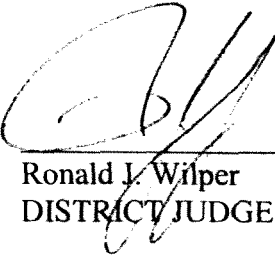
WHETHER MARCIA LIGHTNER'S CLAIM FOR LOSS OF CONSORTIUM FAILS AS A MATTER OF LAW

A claim for loss of consortium "is a wholly derivative cause of action contingent upon a third party's tortious injury to a spouse." *Runcorn v. Shearer Lumber Products, Inc.*, 107 Idaho 389, 394, 690 P.2d 324, 329 (1984). "[F]ederal courts have almost unanimously denied derivative loss of consortium claims based on the violation of the spouse's civil rights." *Jeremiah v. Yanke Machine Shop, Inc.*, 131 Idaho 242, 249, 953 P.2d 992, 999 (1998). In *Jeremiah*, the Idaho Supreme Court

1 would not add a common law remedy which was not recognized in the statute, Title VII or the Idaho
2 Human Rights Act. This case is similar. Mr. Lightner asserts federal and state law claims that his
3 civil rights were infringed but neither Section 1983 nor the Habeas Corpus and Institutional
4 Litigation Procedures Act, Idaho Code §§ 19-4201 to 19-4226, recognizes a loss of consortium
5 cause of action. Even if Mr. Lightner's claim were not barred by his failure to exhaust
6 administrative remedies and if that claim were to have succeeded, a loss of consortium claim based
7 upon alleged violation of civil rights fails as a matter of law. Defendants' motion for summary
8 judgment with regard to this issue is granted.
9

10
11 IT IS SO ORDERED.

12 Dated this 29th day of January, 2009.

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15 
16 Ronald J. Wilper
17 DISTRICT JUDGE
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CERTIFICATE OF MAILING

I, HEREBY CERTIFY that on the 20 day of January, 2009, I caused a true and correct copy of the foregoing ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT to be served by the method indicated below, and addressed to the following:

William Lightner
ICC Unit-C PO Box 70010
Boise, ID 83707

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Marcia Lightner
300 E. 41st Street
Garden City, ID 83714

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Mark Kubinski
1299 N. Orchard, Ste. 110
Boise, ID 83706

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

By INGA JOHNSON
Deputy Clerk

NO. _____
FILED _____
A.M. _____ P.M. 12:32

MAR 23 2009

J. DAVID NAVARRO, Clerk
By A. LYKE
DEPUTY

WILLIAM LIGHTNER
41438 ICC UNIT-C
PO BOX 70010
BOISE, ID 83707

MARCIA LIGHTNER
300 E 41ST
GARDEN CITY, ID 83714

APPELLANTS, PRO, SE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM LIGHTNER)
MARCIA LIGHTNER)
Appellant's Pro, Se)
IDOC DIRECTOR, BRENT RENKE et., al.)
JOHN HARDISON,)
STEVE NELSON,)
Respondent's)
_____)

Case No. CV-OC-07-20193

AMENDED NOTICE OF APPEAL

TO: THE ABOVE RESPONDENTS, ADA COUNTY 4TH DISTRICT COURT et, al
ADA COUNTY PROSECUTING OFFICE et., al, AND ADA COUNTY PUBLIC DEFENDERS
OFFICE et., al. AND THE PARTIES ATTORNEYS, MARK KUBINSKI PROSECUTING
ATTORNEY'S, THE CLERK AND REPORTER OF THE ABOVE ENTITLED COURT:
NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant William Lightner, and Marcia Lightner appeals against the
above named respondents to the Idaho Supreme Court from Memorandum opinion and order
dismissing the Appellants Civil Rights Complaint. (See attached Memorandum Opinion and Order

in the first Notice of Appeal) entered in the above-entitled action (proceeding) on the 22 December 2008, Honorable Ronald J. Wilper.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or orders described in paragraph 1 above are appealable orders under and pursuant to Rule (11(a),

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

A. Marcia Lightners, due process constitutional rights were violated do to not hearing afforded her prior to visitation suspension.

B. William Lightners, loss of consortium when wife's visitation was suspended without due process.

4. (a) Is a reporter's transcript requested? YES

(b) The appellant requests the preparation of the following portions of the reporter's transcript:

1. Transcripts from hearing on 11-14-2008
2. Transcripts from hearing on 12-22-2008.

The entire reporter's standard transcript as defined in Rule 25(a), I.A.R.

Appellant has the Transcripts;

- ☐ The entire reporter's transcript supplemented by the following:
- ☐ Voir Dire examination of jury
- ☐ Closing arguments of counsel
- ☐ The following reporter's partial transcript:

☒ From all Hearings held during this case:

- ☐ The Testimony of witnesses
- ☐ Conferences on requested instructions
- ☐ Instructions verbally given by court

5. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

Appellant requests:


1. 1-14-2008 Civil Rights Complaint
2. 6-16-08 Amended Civil Rights Complaint
3. 11-21-2008 Memorandum for Summary Judgment
4. 11-21-2008 Affidavit of Jill Whittington
5. 11-21-2008 Affidavit of Mark A. Kubinski
6. 11-21-2008 Affidavit of John Hardison
7. 12-9-2008 Response and objection to States Motion for Summary Judgment with Affidavits in support.
(2) Affidavits. (William and Marcia Lightners Affidavits)
8. 12-15-2008 Reply Memorandum in Support of Defendants Motion for Summary Judgment.

6. I certify:

- (a) That a copy of this notice of appeal has been served on the reporter.
- (b)(1) ☐ That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of reporter's transcript.

- (2) ☒ That the appellant is exempt from paying the estimated transcript fee because he is indigent and has already been granted indigence;
- (c)(1) ☐ That the estimated fee for preparation of the clerk or agency's record has been paid.
- (2) ☒ That the appellant is exempt from paying the estimated fee for the preparation of the record because the affiant is indigent.
- (d)(1) ☐ That the appellate filing fee has been paid per the court's order of partial payment;
- 2) ☒ That appellate is exempt from paying the appellate filing fee because he is indigent as shown by the court's order of partial payment of fees;
- (e) That service has been made upon all parties required to be served pursuant to Rule 20 and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code.

Dated this 20 day of March, 2009


WILLIAM LIGHTNER
APPELLANT PRO, SE

Dated this 23 day of March, 2009


MARCIA LIGHTNER
Appellant Pro, Se

STATE OF IDAHO)
)ss.
County of Ada (

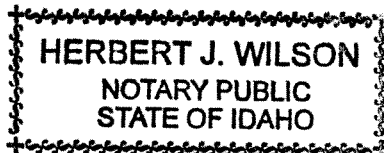
William Lightner, being sworn, deposes and says:

That he is the appellant in the above-entitled AMENDED NOTICE OF APPEAL and that all statements in this Amended Notice Of Appeal are true and correct to the best of his knowledge and belief.

William Lightner 3-23-09
WILLIAM LIGHTNER
Appellant Pro, Se

SUBSCRIBED AND SWORN to before me this 23rd day of March, 2009

SEAL:



[Signature]
Notary Public of Idaho

Commission expires: 5-16-2010

STATE OF IDAHO)
)ss.
County of Ada (

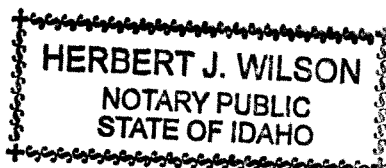
Marcia Lightner, being sworn, deposes and says:

That he is the appellant in the above-entitled AMENDED NOTICE OF APPEAL and that all statements in this Amended Notice Of Appeal are true and correct to the best of his knowledge and belief.

[Signature] 3-23-09
MARCIA LIGHTNER
Appellant Pro, Se

SUBSCRIBED AND SWORN to before me this 23rd day of March, 2009

SEAL:



[Signature]
Notary Public of Idaho

Commission expires: 05-16-2010

NO. _____ FILED _____
A.M. _____ P.M. 4:30

JAN 29 2009

J. DAVID NAVARRO, Clerk
By _____ DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM LIGHTNER and
MARCIA LIGHTNER,

Plaintiffs,

vs.

JOHN HARDISON, BRENT REINKE,
and STEVE NELSON,

Defendants.

Case No. CVOC-0720193

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

This matter came before the Court on the Defendants' motion for summary judgment. The Court heard oral arguments on Monday, December 22, 2008. The Plaintiffs appeared pro se, Mrs. Lightner in person and Mr. Lightner telephonically from the Idaho Correctional Center. Mark Kubinski appeared for the Defendants. The Court took the matter under advisement at that time. For the reasons stated below, Defendants' motion is granted.

BACKGROUND

In 1989, Marcia Lightner received a withheld judgment for an unknown charge. *Aff. Marcia Lightner, Exhibit A.* While serving a prison sentence, William Lightner met Marcia, who was a

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1 contract vendor at the commissary at the Idaho State Correctional Institute (ISCI). *Civil Rights*
2 *Complaint*, ¶ 27. In 1997, the couple married and William Lightner remained incarcerated. *Civil*
3 *Rights Complaint*, ¶ 27. In 1998, William Lightner used the grievance process in regard to visitation
4 issues. *Aff. Jill Whittington*, ¶ 13. The Lightners objected to the prison policy that denied visitation
5 to the couple. *First Amended Civil Rights Complaint*, ¶ 29. Restricted visitation was granted and the
6 Lightners objected to the form of the visitation granted. *First Amended Civil Rights Complaint*, ¶
7 29. In 2000 or 2001, the Lightners received full visitation. *First Amended Civil Rights Complaint*, ¶
8 29. In 2005 William Lightner granted parole. *Aff. John Hardison*, ¶ 6; *Exhibit D*. While he was on
9 parole, the Lightners left the country and took up residence in Belize. *Aff. Marcia Lightner*, ¶ 6.

11 On April 10, 2007, Marcia Lightner was arrested for the felony offense of harboring a felon
12 in violation of Idaho Code § 18-205. *Aff. Marcia Lightner*, ¶ 5; *Aff. Mark Kubinski, Exhibit A*. The
13 following day she was released on bail. *Aff. Marcia Lightner*, ¶ 5. Early in the morning on April 12,
14 2008, Marcia Lightner went to the Idaho State Correctional Institute and was informed that her
15 visitation was suspended as a result of her arrest. *Aff. Marcia Lightner*, ¶ 10. Subsequently, Marcia
16 Lightner wrote to Warden Blades attempting to explain the circumstances of the event and pleading
17 for reinstatement of visitation. *Aff. Marcia Lightner, Exhibit A*. Warden Blades reinstated the
18 Lightners' visitation on the condition that she keep the facility informed of the status of her case.
19 *Aff. Marcia Lightner*, ¶ 16. Marcia Lightner contacted the staff in August 2007 with an update, but
20 failed to provide any other updates. *Aff. Marcia Lightner*, ¶ 18.

22 The Lightners have a history of violating facility policies. On November 29, 2006, William
23 Lightner accepted a visitation restriction when offered the choice of visitation restriction or a DOR
24 for violating the visitor contact rules at the beginning and conclusion of his visits with Marcia
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1 Lightner. *Aff. John Hardison, Exhibit G.* On December 28, 2006, William Lightner was issued a
2 DOR for inappropriate goodbye. *Id.* On July 22, 2007, other visitors to the Idaho State Correctional
3 Institute complained that Marcia Lightner was changing the order of the visitors log and was
4 dressed inappropriately for visiting, including sheer, revealing clothing and a lack of undergarments.
5 *Id.* On August 27, 2007, Marcia Lightner parked in an accessible space but failed to display her
6 disabled identification permit. *Id.* When reminded to be sure that her permit was displayed, Marcia
7 Lightner exhibited hostility to the officer. *Id.*

8 On October 1, 2007, Marcia Lightner was informed by telephone that visitation was
9 suspended because she was a security risk and that there was a possibility of reconsideration
10 pending the outcome of her case. *Aff. Marcia Lightner, ¶ 21.* Although requests for a personal
11 meeting were made, Director Brent Reinke did not meet with Marcia Lightner regarding the
12 visitation suspension. *Aff. Marcia Lightner, ¶ 23.* No internal grievances relating to visitation issues
13 were filed by William Lightner between January 2007 and January 2008. *Aff. Jill Whittington, ¶ 13.*

14 On March 31, 2008, Marcia Lightner pled guilty to obstructing justice and received a two
15 year probation sentence. *Aff. Mark Kubinski, Exhibit A.* The harboring a felon charge was dismissed
16 as part of the plea agreement. *Aff. Marcia Lightner, ¶ 5.* The Lightners have had visitation since
17 June 13, 2008. *Aff. John Hardison, Exhibit H.* To compensate for the period of separation, the
18 Lightners seek an award of \$120,000 and \$12,500.00 per missed visit—a total of nearly \$1.5
19 million. *First Amended Civil Rights Complaint, 11.*

22 SUMMARY JUDGMENT STANDARD

23 Summary judgment is appropriate if “the pleadings, depositions, and admissions on file,
24 together with the affidavits, if any, show that there is no genuine issue as to any material fact and
25

1 that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). If the evidence
2 reveals that no disputed issues of material fact exist, then only a question of law remains. *First Sec.*
3 *Bank of Idaho, N.A. v. Murphy*, 131 Idaho 787, 790, 964 P.2d 654, 657 (1998). In a motion for
4 summary judgment, all disputed facts are construed liberally in favor of the non-moving party and
5 all reasonable inferences drawn from the record are to be drawn in favor of the non-moving party.
6 *See Williams v. Blakley*, 114 Idaho 323, 324, 757 P.2d 186, 187 (1988); *Blake v. Cruz*, 108 Idaho
7 253, 255, 698 P.2d 315, 317 (1985). Idaho Rule of Civil Procedure 56(e) provides that an adverse
8 party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits
9 specific facts showing there is a genuine issue for trial. *See Rhodehouse v. Stutts*, 125 Idaho 208,
10 211, 868 P.2d 1224, 1227 (1994). The affidavits either supporting or opposing the motion must set
11 forth facts that would be admissible in evidence and show that the affiant is competent to testify.
12 *Id.*, I.R.C.P. 56(e). To withstand a motion for summary judgment, the non-moving party’s case must
13 be anchored in something more than speculation; a mere scintilla of evidence is not enough to create
14 a genuine issue. *Zimmerman v. Volkswagon of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67, 69
15 (1996).
16

17 **WHETHER PLAINTIFF WILLIAM LIGHTNER’S CLAIMS ARE BARRED DUE TO HIS FAILURE TO**
18

19 **EXHAUST THE ISCI GRIEVANCE PROCESS**

20 It is well established that a prisoner may not bring an action with respect to conditions of
21 confinement without first exhausting available administrative remedies. Idaho Code § 19-4206; 42
22 U.S.C. § 1997e(a); *Drennon v. Idaho State Correctional Institution*, 145 Idaho 598, 602, 181 P.3d
23 524, 528 (2007). There is sufficient evidence in the record to indicate that ISCI has a grievance
24 procedure and that William Lightner was familiar with the prison grievance system, having used it
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1 in the past for similar issues. There is also sufficient evidence to ascertain that not only did Mr.
2 Lightner fail to exhaust the administrative remedy process, he failed to avail himself of this process
3 at all with regard to the October suspension of visitation.

4 Plaintiffs assert that this is not a condition of confinement case, "but only the termination of
5 his wife's visitation privileges" and has "a constitutional issue of material fact." Response and
6 Objection to State's Motion for Summary Judgment, ¶ 16. The Eighth Amendment, which prohibits
7 cruel and unusual punishments, imposes a duty on prison officials to provide humane conditions of
8 confinement and to take reasonable measures to guarantee the safety of the inmates. *Helling v.*
9 *McKinney*, 509 U.S. 25, 31-33 (1993). Conditions of confinement that are subject to exhaustion
10 have been defined broadly by federal courts as the effects of actions by government officials on the
11 lives of and discipline of persons confined in prisons. *Preiser v. Rodriguez*, 411 U.S. 475, 499
12 (1973); *Smith v. Zachary*, 255 F.3d 446, 449 (7th Cir.2001); *see also Lawrence v. Goord*, 304 F.3d
13 198, 200 (2d Cir.2002); 18 U.S.C. § 3626(g)(2). The determination of who may visit an inmate at
14 what time, subject to what restrictions, and for how long is an action by a government officials that
15 has an effect on the life of a person confined to prison. The Court finds that this is a condition of
16 confinement case to which the exhaustion requirement applies.
17
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19 The Plaintiffs cite cases where the federal exhaustion requirement was held not to apply, but
20 these cases are very different from the one at hand. One cited case dealt with cell temperatures that
21 would cause inmates to become hypothermic. *Mitchell v. Shomig*, 969 F. Supp. 487 (N.D. IL. 1997).
22 Another dealt with unhealthy air. *Bishop v. Lewis*, 155 F.3d 1094 (9th Cir. 1998). Requiring inmates
23 to follow a grievance procedure in a life threatening situation would be improper. The Lightners'
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1 situation was not life threatening. Plaintiff William Lightner failed to exhaust the IDOC grievance
2 process. Defendants' motion for summary judgment with regard to this issue is granted.

3 **WHETHER PLAINTIFFS HAVE FAILED TO STATE A CLAIM AGAINST DIRECTOR BRENT REINKE**

4 In order for a person acting under color of state law to be liable under Section 1983, there
5 must be a showing of personal participation in the alleged rights deprivation. *Jones v. Williams*, 297
6 F.3d 930, 934 (9th Cir. 2002) (citing *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (requiring
7 personal participation in the alleged constitutional violations); *May v. Enomoto*, 633 F.2d 164, 167
8 (9th Cir. 1980) (holding that section 1983 liability must be based on the personal involvement of the
9 defendant)). There is no respondeat superior liability under this section. *Id.* (citing *Monell v. Dep't*
10 *of Soc. Servs.*, 436 U.S. 658 (1978) (rejecting the concept of respondeat superior liability in the
11 section 1983 context and requiring individual liability for the constitutional violation). Further, in a
12 civil rights complaint, the circumstances constituting violation of a civil or constitutional right must
13 be stated in the complaint with particularity. I.R.C.P. 9(b). Plaintiffs do not identify any alleged
14 constitutional violation personally caused by Director Reinke. Plaintiffs also fail to make any
15 factual allegations of constitutional violations against Director Reinke in their amended complaint.
16 Defendants' motion for summary judgment with regard to this issue is granted.

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19 **WHETHER PLAINTIFFS HAVE FAILED TO STATE A CLAIM AGAINST DEFENDANT STEVE NELSON**

20 As stated above, in an inmate civil rights action, there must be a showing of personal
21 participation in the alleged rights deprivation and in any civil rights action the circumstances
22 constituting that violation must be stated with particularity. The record indicates that Mr. Nelson
23 was not employed at the facility at the time of the October visitation suspension. *Aff. John*
24 *Hardison*, ¶ 12. As Mr. Nelson was not at the facility at the time of the visitation suspension, his
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1 personal participation in it would not be possible. Defendants' motion for summary judgment with
2 regard to this issue is granted.

3 **WHETHER THE DENIAL OF MARCIA LIGHTNER'S VISITATION VIOLATE HER CONSTITUTIONAL**

4 **RIGHTS**

5 The United States Constitution protects "certain kinds of highly personal relationships."
6 *Roberts v. United States Jaycees*, 468 U.S. 609, 618, 619–20 (1984). However, the United States
7 Supreme Court has limited the protection of relationships where incarceration is a factor.

8
9 The very object of imprisonment is confinement. Many of the liberties and
10 privileges enjoyed by other citizens must be surrendered by the prisoner. An inmate
11 does not retain rights inconsistent with proper incarceration. And, as our cases have
12 established, freedom of association is among the rights least compatible with
13 incarceration. Some curtailment of that freedom must be expected in the prison
14 context.

15 *Overton v. Bazzetta*, 539 U.S. 126, 131 (2003) (citations omitted).

16 Protected liberty interests "may arise from two sources—the Due Process Clause itself and
17 the laws of the States." *Ky. Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989) (quoting
18 *Hewitt v. Helms*, 459 U.S. 460 (1983)). "The Due Process Clause of the federal constitution does
19 not, of its own force, create a liberty interest . . . , for it is well settled that an inmate does not have a
20 liberty interest in the denial of contact visits by a spouse, relatives, children, and friends." *Block v.*
21 *Rutherford*, 468 U.S. 576 (1984). The denial of a prisoner's access to a particular visitor "is well
22 within the terms of confinement ordinarily contemplated by a prison sentence." *Thompson*, 490 U.S.
23 at 461 (quoting *Hewitt*, 459 U.S. at 468).

24 However, state statutes or regulations can create a due process liberty interest where none
25 otherwise would have existed. *Thompson*, 490 U.S. at 461. For a state law to create a liberty
26 interest, it must contain "explicitly mandatory language." *Thompson* 490 U.S. at 460 (quoting
27 *Thompson*, 490 U.S. at 461). 000114

1 *Hewitt*, 459 U.S. at 472). In *Sandin*, the United States Supreme Court held that liberty interests are
2 not created by negative implications from mandatory language in prison regulations. *Sandin v.*
3 *Conner*, 515 U.S. 472, 484 (1995). Rather, to create a liberty interest, the action taken must be an
4 atypical and significant deprivation from the normal incidents of prison life. *Id.* Where the language
5 of state statutes and regulations create a right, that right is entitled to due process protection. See
6 *Mendoza v. Blodgett*, 960 F.2d 1425 (9th Cir. 1992) (holding that where a prison regulation
7 contained explicit mandatory language that a visiting privilege could only be suspended after a
8 finding of guilt, the termination of the privilege violated due process); *Taylor v. Armontrout*, 894
9 F.2d 961 (8th Cir. 1989) (holding regulation that stated peoples whose names appear on the list
10 "shall" be allowed to visit created a right to visitation entitled to due process protection).
11

12 Idaho Board of Correction Rule 604 states in pertinent part:

13 Nothing in Section 604 establishes a right to visit any inmate. Nothing in Section 604
14 should be interpreted as an expectation that visitation will be approved between any
15 person and any inmate if the Department has suspended, terminated, or revoked a
16 visitor or inmate's visiting privileges.

16 ...

17 Inmate visitation is allowed at the discretion of the facility head or designee. Each
18 division may develop standard operating procedures and field memoranda to govern
19 inmate visiting.

19 ...

20 A person who has pending criminal charges or who is the subject of a criminal
21 investigation will not be permitted to visit an inmate, except upon written approval of
22 the facility head or designee.

23 IDAPA 06.01.01.604.01, .02, .05(j).

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1 Additionally, Rule 604 makes clear that visits may be suspended, restricted, or terminated at any
2 time, for any period of time at the discretion of the facility head in accordance with standard
3 operating procedures. IDAPA 06.01.01.604.06.

4 Plaintiffs challenge the constitutionality of Rule 604. The United States Supreme Court
5 established a four factor test to determine the validity of a prison regulation affecting a
6 constitutional right. *Turner v. Safley*, 482 U.S. 78 (1987). In 2003, the United States Supreme Court
7 applied that test to a challenge to the constitutionality of a prison visitation regulation. *Overton v.*
8 *Bazzetta*, 539 U.S. 126, 133 (2003) The *Turner* factors are: 1) whether the regulation has a valid,
9 rational connection to a legitimate government interest; 2) whether alternative means are open to
10 inmates to exercise the asserted right; 3) what impact an accommodation of the right would have on
11 guards and inmates and prison resources; and 4) whether there are ready alternatives to the
12 regulation. *Id.* at 132. The burden is on the challenger to disprove the validity of the regulation, not
13 on the prison to prove the validity of the regulation. *Id.* "The status of a person as a prisoner or a
14 non-prisoner does not determine whether the *Turner* test applies to prison regulations that may
15 affect both prisoners and non-prisoners." *Rice v. Kempker*, 374 F.3d 675, 681 (8th Cir. 2004);
16 *Thornburgh v. Abbott*, 490 U.S. 401, 411 n. 9 (rejecting "any attempt to forge separate standards for
17 cases implicating the rights of outsiders").
18
19

20 Preventing an inmate from visiting with someone accused of harboring a fugitive serves the
21 legitimate penological purpose of protecting the security of the institution. Preventing visits which
22 habitually create a disturbance serves the legitimate penological purpose of minimizing disruption
23 in the visiting area. The Court finds that Warden Hardison was acting with the penological purpose
24 to preserve the safe, secure, and orderly operation of the facility. Alternative means of
25
26

1 communication are available to the Lightners, they have regular telephone conversations and access
2 to mail services. These alternative methods of communication were found sufficient by the United
3 States Supreme Court in *Overton*. Based on the evidence provided, the Lightners' visits are
4 challenging for the guards, a drain on prison resources, and unfair to other inmates in that more time
5 must be spent with the Lightners to the detriment of other visitors. As to the impact an
6 accommodation for the Lightners would have on guards and inmates and prison resources, even
7 when viewed in the light most favorable to the Plaintiffs, the evidence shows that an attempt to
8 accommodate the Lightners could have been unreasonably time consuming and burdensome on the
9 facility and the other inmates. In explanation of the fourth factor, the United States Supreme Court
10 stated, "*Turner* does not impose a least restrictive alternative test, but asks instead whether the
11 prisoner has pointed to some obvious regulatory alternative that fully accommodates the asserted
12 right while not imposing more than a de minimus cost to the valid penological goal." *Overton*, 539
13 U.S. at 136. Plaintiffs have provided no such alternative nor does one seem to exist within the
14 limited resources of the IDOC.
15

16 The Plaintiffs have failed to meet their burden in showing the regulation to be
17 unconstitutional. The Court finds that Marcia Lightner's constitutional rights have not been violated
18 by the suspension of visitation. Defendants' motion for summary judgment with regard to this issue
19 is granted.
20

21 **WHETHER DEFENDANT HARDISON IS ENTITLED TO QUALIFIED IMMUNITY**

22 The three-part inquiry to determine if a public official asserting qualified immunity is
23 entitled to the defense consists of: 1.) Was there a clearly established law? 2.) Did the conduct of
24 the party asserting qualified immunity violate a clearly established right of the party claiming the
25

1 violation? and 3.) Was the conduct of the party asserting qualified immunity reasonable? *Farnworth*
2 *v. Femling*, 125 Idaho 283, 286, 869 P.2d 1378, 1381 (1994). If a reasonable official could have
3 believed that his actions were lawful, summary judgment on the basis of qualified immunity is
4 appropriate. *McKinsey v. Vernon*, 130 Idaho 354, 357, 941 P.2d 327, 329 (1997) (quoting *Hemphill*
5 *v. Kincheloe*, 987 F.2d 589, 593 (9th Cir. 1993)). Only where there is a genuine issue of fact that
6 would preclude a grant of summary judgment, should the court let the case to proceed to trial. *Id.*

7 *Overton* provides established law that visitation regulations which are rationally related to a
8 legitimate penological interest are constitutional. There is no Constitutional right to unrestricted
9 visitation, therefore Defendant Hardison did not violate that right by imposing an indefinite
10 suspension of the Lightners' visitation. Even when viewed in the light most favorable to Plaintiffs,
11 the circumstances surrounding the Lightners' visits are a security risk and costly to the facility.
12 William Lightner would be a flight risk if he were to have an opportunity to leave the facility.
13 Marcia Lightner was fooled by a fugitive and assisted her in her flight. The warden's actions were
14 objectively reasonable to ensure the security of the facility and minimize cost to the facility.
15 Defendant Hardison is entitled to qualified immunity. Defendants' motion for summary judgment
16 with regard to this issue is granted.
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19 **WHETHER MARCIA LIGHTNER'S CLAIM FOR LOSS OF CONSORTIUM FAILS AS A MATTER OF LAW**


20 A claim for loss of consortium "is a wholly derivative cause of action contingent upon a
21 third party's tortious injury to a spouse." *Runcorn v. Shearer Lumber Products, Inc.*, 107 Idaho 389,
22 394, 690 P.2d 324, 329 (1984). "[F]ederal courts have almost unanimously denied derivative loss of
23 consortium claims based on the violation of the spouse's civil rights." *Jeremiah v. Yanke Machine*
24 *Shop, Inc.*, 131 Idaho 242, 249, 953 P.2d 992, 999 (1998). In *Jeremiah*, the Idaho Supreme Court
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26 000118

1 would not add a common law remedy which was not recognized in the statute, Title VII or the Idaho
2 Human Rights Act. This case is similar. Mr. Lightner asserts federal and state law claims that his
3 civil rights were infringed but neither Section 1983 nor the Habeas Corpus and Institutional
4 Litigation Procedures Act, Idaho Code §§ 19-4201 to 19-4226, recognizes a loss of consortium
5 cause of action. Even if Mr. Lightner's claim were not barred by his failure to exhaust
6 administrative remedies and if that claim were to have succeeded, a loss of consortium claim based
7 upon alleged violation of civil rights fails as a matter of law. Defendants' motion for summary
8 judgment with regard to this issue is granted.
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11 IT IS SO ORDERED.

12 Dated this 29th day of January, 2009.

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15 Ronald J. Wilper
16 DISTRICT JUDGE
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CERTIFICATE OF MAILING

I, HEREBY CERTIFY that on the 20 day of January, 2009, I caused a true and correct copy of the foregoing ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT to be served by the method indicated below, and addressed to the following:

William Lightner
ICC Unit-C PO Box 70010
Boise, ID 83707

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Marcia Lightner
300 E. 41st Street
Garden City, ID 83714

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Mark Kubinski
1299 N. Orchard, Ste. 110
Boise, ID 83706

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

By INGA JOHNSON
Deputy Clerk

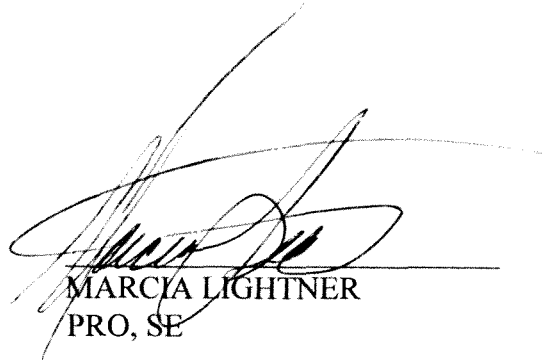
000120

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on the 23 day of March, 2009, I mailed a true and correct copy of
the AMENDED NOTICE OF APPEAL via US mail system to:

MARK KUBINSKI
OFFICE OF THE ATTORNEY GENERAL
PO BOX, 83720,
BOISE, IDAHO 83720-0010

ADA COUNTY COURT REPORTER
200 W FRONT STREET,
BOISE, IDAHO 83702-0010



MARCIA LIGHTNER
PRO, SE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM LIGHTNER and MARCIA
LIGHTNER,

Plaintiffs- Appellants,

vs.

JOHN HARDISON, BRENT REINKE and
STEVE NELSON,

Defendants-Respondents.

Supreme Court Case No. 36259

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Memorandum in Support of Defendants' Motion for Summary Judgment, filed November 21, 2008.
2. Affidavit of Jill Whittington, filed November 21, 2008.
3. Affidavit of Mark A. Kubinski, filed November 21, 2008.
4. Affidavit of John Hardison, filed November 21, 2008.
5. Affidavit of William Lightner, filed December 9, 2008.
6. Affidavit of Marcia Lightner, filed December 9, 2008.
7. Reply Memorandum in Support of Defendants' Motion for Summary Judgment, filed December 15, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 22nd day of May, 2009.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF EXHIBITS

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In the Supreme Court of the State of Idaho

WILLIAM LIGHTNER and MARCIA
LIGHTNER,

Plaintiffs-Appellants,

v.

JOHN HARDISON, BRENT RENKE,
STEVE NELSON,

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ORDER GRANTING MOTION TO
AUGMENT THE RECORD

Supreme Court Docket No. 36259-2009
Ada County Docket No. 2007-20193

Defendants-Respondents.

APPELLANTS MOTION TO AUGMENT THE RECORD ON APPEAL WITH
AFFIDAVIT IN SUPPORT and AFFIDAVIT IN SUPPORT OF MOTION TO AUGMENT THE
RECORD were filed by Appellants on July 27, 2009. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant's MOTION TO AUGMENT THE RECORD be,
and hereby is, GRANTED and the augmentation record shall include the documents listed below,
file stamped copies of which accompanied this Motion, as EXHIBITS:

1. Motion to Amend Civil Rights Complaint, file-stamped April 21, 2008;
2. Notice of Filing Affidavit in Support of Response to Defendants' Motion to Strike William Lightner's Affidavit w/ attachments, file-stamped December 19, 2008;
3. Amended Affidavit in Support of Amended Complaint w/ attachment, file-stamped April 23, 2008;
4. Motion to Reconsider the Court's Order Granting Defendants' Motion for Summary Judgment, file-stamped February 12, 2009;
5. Memorandum in Support of Motion for Reconsideration w/ attachments, file-stamped February 12, 2009;
6. Affidavit of Marcia Lightner in Support of Motion for Reconsideration; file-stamped February 12, 2009; and
7. Order Denying Plaintiffs' Motion to Reconsider, file-stamped March 13, 2009.

DATED this 30 of July 2009.

For the Supreme Court

Stephen W. Kenyon
Stephen W. Kenyon, Clerk

cc: Counsel of Record
William and Marcia Lightner, pro se

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM LIGHTNER and MARCIA
LIGHTNER,

Plaintiffs- Appellants,

vs.

JOHN HARDISON, BRENT REINKE and
STEVE NELSON,

Defendants-Respondents.

Supreme Court Case No. 36259

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have
personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of
the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

WILLIAM LIGHTNER

APPELLANT PRO SE

BOISE, IDAHO

PAUL R. PANTHER

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

J. DAVID NAVARRO
Clerk of the District Court

Date of Service: JUN 23 2009

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE OF SERVICE

000123

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

WILLIAM LIGHTNER and MARCIA
LIGHTNER,

Plaintiffs- Appellants,

vs.

JOHN HARDISON, BRENT REINKE and
STEVE NELSON,

Defendants-Respondents.

Supreme Court Case No. 36259

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 11th day of March, 2009.

J. DAVID NAVARRO
Clerk of the District Court

By BRADLEY J. THIES
Deputy Clerk

CERTIFICATE TO RECORD

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